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The first reaction to truth is hatred.
The moment it appears, it is treated as an enemy.
Tertullian, *Apologeticus*, c.197 CE

In Shakespeare's play of the same name a fortune teller warned the Roman Emperor, *Julius Caesar*, to 'beware of the ides of March', i.e. on this day, 15 March 44 B.C. a conspiracy of Roman Senators, led by Marcus Junius Brutus, executed their plan to assassinate their leader for life. The Month of March in Australia was heavy with deliberations on Section 18C of the Racial Discrimination Act. In the following pages we have assembled a collection of the most notable media articles wherein the current Liberal-National coalition government seeks to eliminate the legal protection currently offered by Section 18C to individuals who have experienced hurt feelings.

It is only sometimes mentioned, then grudgingly and disparagingly, the Töben case determined that an aggrieved individual's claim to hurt feelings is not subjected to any objective test but rather is determined by the person so aggrieved, which supporters of multiculturalism wish to retain. In the Töben case it was enough for a Jew to claim that any questioning of the factuality of the orthodox Holocaust-Shoah narrative causes hurt feelings, which is patently a nonsense because in a so-called democratic society a robust exchange of views on any topic should not be legally protected. Section 18C led to Fredrick Töben's imprisonment and bankruptcy and a particular version of an alleged historical event gained legal protection, which is already the case in a number of European countries.

You will also note the heavy involvement of Jews in seeking to retain Section 18C, and the various ethnic groups controlled by Jews ar singing from the same song-sheet. But let's recap a little and start with a light-hearted item that reflects some of the unspoken mental factors weighing heavily on some Sydney Jews – Australia's politician, Malcolm Turnbull addressing a meeting wherein he speaks the German language:

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'Bis Hundert und fünfzig'
By Henry Benjamin, March 25, 2014

Federal Minister for Communications Malcolm Turnbull told Bondi's Burger Centre's Seniors' Expo that we are fast approaching the time we should wish people "bis hundert und fünfzig instead of zwanzig.

Turnbull said that one of secrets of not yielding to depression in old age is to stay active, adding that men during their lives identify themselves by their jobs so they face problems when they retire. The answer is to maintain "lots of interests and activities".

Burger Centre Manager Suzi Parker with Malcolm Turnbull

He said: "I meet people today in their 30s, 40s and 50s who are complete workaholics. I think they are setting themselves out for problems later down the track. His advice to them is to develop lots of interests as the time we could come when the bank, or the law firm or government job would not be there anymore."

He told the audience that he paddled a kayak 18 kms the day before on the harbour from Point Piper to South Head back to the Opera House returning to Point Piper. Turnbull will turn 60 later this year.

He spoke of Elizabeth Murdoch turning 100 at which time he sent her a message through the Daily Telegraph wishing her "bis hundert und zwanzig". He met up with her later and she asked him: "Do you know that message you sent me? Well thank you very much Mr Turnbull. I am 100 already so 120 doesn't seem that ambitious.' " Turnbull added: "And so, without wanting to offend any of the rabbis I think the time has come to recalibrate given people's greater life expectancy. When people first said 'bis hundert und zwanzig' that was an inconceivable age…maybe now it should be 'bis hundert und funfzig'…so 150 is the new target."

He concluded by praising the work of the Burger Centre.

Speakers at the Expo included former Sydney Morning Herald journalist Adele Horin who currently runs a blog entitled 'Coming of Age', Professor Henry Brodaty who specialises in geriatric diseases including dementia, Dr Dev Banerjee a sleep and respiratory specialist, and Associate Professor Michael Valenzuela whose works in the regenerative and neuroscience fields.

Stalls displaying goods and services for the aged were run by Wolper Hospital, the COA, the University of the Third Age, the Coast Centre, Calamity Alarms, the Montefiore Home, JewishCare, Quantum Vision, Australian Hearing and Waverley and Woollahra Councils,

http://www.jwire.com.au/news/bis-hundert-und-funfzig/41453

Tim Wilson and the balancing act of human rights

By Sarah Joseph, Updated Thu 19 Dec 2013, 12:20pm AEDT

The defence of free speech is vitally important, especially in Australia, but this should not come at the expense of the dignity and equality of the disadvantaged, writes Sarah Joseph.

PHOTO: Tim Wilson has been appointed as Australia's human rights commissioner. (Supplied: IPA)

Tim Wilson, former policy director for right-wing think-tank the Institute of Public Affairs (IPA), has been appointed as the human rights commissioner. His remit will be in the area of "freedom", focusing particularly on freedom of speech. Attorney-General George Brandis explained that Wilson's appointment would bring "balance" to the Australian Human Rights Commission (AHRC).

Regarding balance, the AHRC has been criticised, by the IPA amongst others, for focusing too much on the right to be free from discrimination - the AHRC has commissioners covering discrimination on the grounds of race, sex, disability and age as well as commissioners for children and Aboriginal and Torres Strait Islanders.

However, such a focus is hardly surprising given that Australia's federal human rights legislation covers anti-discrimination. Otherwise, we lack explicit human rights protection at the national level (and in most states), including a general law protecting free speech. An increase in such protection would be warmly welcomed by human rights advocates across the country.

"Freedom" is certainly an important component of human rights, generally denoting freedom *from* government action and regulation. This aspect of human rights is often referred to as "negative rights", where governments must refrain from interfering with people. These rights accord well with the "small government" ethos of the IPA, which has long campaigned against perceived government threats to freedom, such as greater regulation of newspapers and even plain packaging for tobacco products.

Wilson and the IPA believe that human activity is best "regulated" by the free market rather than by governments, which they seem to believe are inherently oppressive, inefficient, or at the very least expensive (interfering with us by taxing us). This "free market approach" to human rights, however, takes no account of existing power relations. Such an approach, if adopted exclusively, protects human rights for the strong but offers far less to the disadvantaged.

A sole focus on negative rights fails to encompass the complexity and nuances of the full corpus of human rights. Free speech is a vitally important right, but it is not an unlimited one. This is made clear in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Brandis referred in announcing Wilson's appointment.

Indeed, the ICCPR and other international human rights instruments also set out "positive rights", according to which governments must perform certain acts in order to fulfil human rights. Sometimes, it's necessary to balance rights against each other, including "positive rights" against "negative" ones.

For example, in the free speech arena, governments must not interfere arbitrarily with what we express, say and read. However, certain viewpoints simply do not capture the attention of the commercial media. For example, commercial broadcasters have a tendency to be conservative and mainstream in choosing content, so as not to scare off advertisers and viewers. There is a need for government broadcasters such as the ABC and SBS to cater for non-commercial tastes to ensure access to a wide variety of views and ideas. Yet the IPA is a vigorous supporter of the privatisation of these institutions.

Wilson is already at odds with his fellow human rights commissioners on the issue of section 18C of the Race Discrimination Act. That section renders it unlawful for a person to offend, insult, humiliate or intimidate another person on the basis of race, though certain defences are contained in section 18D. Andrew Bolt was famously found to have breached this provision in 2011, and the IPA has been amongst the most prominent in bemoaning the "silencing" of the prominent commentator.

Wilson advocates a repeal of section 18C in its entirety. While I am inclined to agree with him regarding speech which is offensive or insulting, I cannot agree regarding speech which is intimidating. The prohibition on racially intimidatory speech in section 18C is designed to prevent the silencing of members of the target group, normally (but not always) a historically oppressed minority. At worst, such speech can provoke violence and hatred against racial groups. Words can in fact hurt.

Anti-discrimination laws are the classical response to the need to protect vulnerable groups. Yet Wilson stated before a parliamentary committee earlier this year that he was not convinced that there was a human right against discrimination. There is in fact no doubt that such a right exists from the perspective of domestic and international law. Wilson's statement may be a classic example of the IPA's focus on individual liberty (in this case, the liberty to discriminate), concealing the reality that not all individuals have equal opportunities.

The "free market" approach to human rights certainly upholds freedom. However, it obscures two other key components of human rights, dignity and especially equality. It is to be hoped that Commissioner Wilson takes into account and embraces the full spectrum of human rights, including an appropriate balance between them, while performing his new role. I wish him well.

Sarah Joseph is the director of the Castan Centre for Human Rights Law at Monash University. View her full profile here.

http://www.abc.net.au/news/2013-12-19/joseph-tim-wilson-human-rights-commission/5166506

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From: Fredrick Toben toben@toben.biz
Sent: Sunday, 16 March 2014 3:42 PM
To: email@timwilson.com.au; senator.brandis@aph.gov.au; Tony.Abbott.MP@aph.gov.au
Cc: 'Rebel of Oz'; 'Michael Santomauro'; 'Adelaide Institute'; ajn@jewishnews.net.au
Subject: Fredrick Töben writes an Open Letter to Mr Tim Wilson, Human Rights Commissioner, Sydney, Australia

Dear Mr Wilson,

1. The last time I saw you was at the Senate Hearings into the RDA in Melbourne where you presented you passionate plea for sexual tolerance. Now as the new Human Rights Commissioner you stated on ABC TV, Lateline, Friday, 14 March 2014, that I am motivated by hatred because I am a Holocaust questioner, you labelling me a "Holocaust denier" – see below for transcript of session and clip:
http://www.abc.net.au/lateline/content/2014/s3963918.htm .
2. Please note that with my German background it is a normal reaction for me to question any accusation levelled against Germans whenever matters Holocaust arise, specifically when this horrendous unexamined accusation is made that Germans with clear intent systematically exterminated European Jews in homicidal gas chambers. See below the story: **'The number is with me everywhere I go'.** This current story is an example of another miraculous escape from the Auschwitz gas chambers, and I ask: When will the matter be tested for factual truth-content? After almost four decades Professor Robert Faurisson's challenge still stands: 'Show me or draw me the homicidal gas chamber – the murder weapon of Auschwitz?' Then there are texts whose content remains unrefuted: Professor Arthur Butz's classic, *The Hoax of the 20th Century*, Germar Rudolf's *The Rudolf Report*, Carlo Mattogno, Thomas Kues, Jürgen Graf *The "Extermination Camps" Of "Aktion Reinhardt"*, and many other books that in Germany, for example, are banned because they question the pillars on which the Holocaust narrative rests.
3. This act of enquiring into the factual claims, and whether they stand up to scrutiny, cannot be labelled an act of HATE, as you do. In fact, I consider the teaching of matters Holocaust as an act of expressed racial hatred against Germans. Years ago I attempted to bring an action of such nature before the Human Rights Commission but was almost laughed at by the registry staff. Kirsty Gowans at that time advised me that HREOC was a political animal.
4. Please view the following clip
http://www.youtube.com/watch?v=xS73ufRIoYc wherein at the beginning a questioner states that the Holocaust narrative remains unchallenged, which cannot be questioned and is taught in schools as ***'a quasi religious dogma'***, and she elicits from a Holocaust believer the astounding response at 5.05:***...the West incurred a debt towards the Jews from the Holocaust and the Palestinians paid for that, and I think that one of the great discoveries of the last few years from Palestinian solidarity is the understanding that the West also has a debt to Palestinians and we ....***
5. Then, let me briefly comment on the comment made by Jeremy Jones in the ABC TV program, Lateline: >>*Since that time we've had a series of cases and when we look at the situation before the law came in, and since, you could say that the law has acted to do exactly what Tim is saying we need, which is providing the argument against those - the people who will otherwise not listen to reason, and I don't agree that you can automatically say that it's self-evident that somebody like a Holocaust denier is bad. It took the court case to go through to identify what was wrong with the argument and it was because of the judgment that this was seen to be something abhorrent.*<<
5.1 When in 1996 Jones started legal action against me he refused to conciliate and opted directly for a formal hearing because Section 18C had been designed specifically to stifle debates on matters Holocaust and the legal model used was that from Germany where a specific Holocaust law stifles debate because any questioning results in **"defaming the memory of the dead"**. In most legal jurisdictions a defamation action ends with the aggrieved person's death. Not so with the Jews.
5.2. Mr Jones also refused to conciliate with Mrs Olga Scully and Mr Anthony Grigor-Scott, the latter was the only one who won his appeal before the Federal Court. Both Mrs Scully and I were bankrupted on account of having court costs awarded against us. Jones' aim was to place so-called "Holocaust denial" out of the reach of open debate. Both Mrs Scully and I insisted that the commissioners and the judges help us in finding the truth of the allegations made against Germans within the officially-sanctioned Holocaust narrative. Unfortunately, both commissioners and judges refused to state to us that truth is a defence against the allegation levelled against us. And they were certainly not interested in looking into the factuality of what we were presenting. In fact, one judge during my 2009 appeal threateningly stated to my counsel: 'You are not suggesting the Holocaust didn't happen!' Counsel's response was: 'With respect, Your Honour, that is not how I ran the case'.
5.3 Thus at no time were matters of fact canvassed in court for truth-content, but only whether Section 18C was activated by the published material in question. Of course, any material can be judged to give rise to an offence – and questioning the factuality of the Holocaust narrative is offensive to those who fear open debate about this historical incident now labelled "Holocaust". The almost two decades-long court case in which I was locked in with Jones never once looked at any arguments and what allegedly was ***abhorrent*** about them. The last time Holocaust matters of fact were canvassed in a court of law anywhere in the world was in 1988 during the Ernst Zündel Toronto Holocaust trial. Since that time Holocaust trials focused on matters of law – and operated under a watered-down defamation legal framework where there was in effect no defence available for an accused of, for example, spreading **HATE.**
6. Mr Wilson, if you really value free expression, which you state is also in your personal interest, then be wary of those who split free expression into **free speech** and **hate speech**. After all, for the latter we have defamation laws where individuals can go to court if aggrieved about what someone has said or written about them. Then we test such "absurd", "ridiculous" and "preposterous" statements for truth content and investigate the physical facts. The implied allegation you have made against me is that my expressing my views is because I have **"hate in their [my] heart"**; or would it be possible for you to entertain the thought that I am just telling the truth! After all, is it not a truism, which any student has to learn, that sometimes the truth hurts?
7. As I am being blocked by personnel within the Attorney-General's office from personally discussing this matter with Senator Brandis, with whom I briefly exchanged words about a visit to his office during the Wagner Ring Gala Dinner in November 2013 at Melbourne, I would appreciate us having a discussion on this matter and then perhaps you can ascertain whether I am motivated by hate in my heart.
Kindest regards
Fredrick Toben
toben@toben.biz

ABC TV - Friday Forum

Updated Sat 15 Mar 2014, 1:01am AEDT

Human Rights Commissioner, Tim Wilson, and, Jeremy Jones, from the Australia, Israel and Jewish Affairs Council join Ticky Fullerton to discuss the Government's plan to repeal provisions in the Racial Discrimination Act.

Ticky Fullerton; Source: Lateline | Duration: 17min 10sec;

TICKY FULLERTON: PRESENTER: The Federal Government is under growing pressure over its plans to repeal provisions in the Racial Discrimination Act.
On one side, from groups who fear that laws to protect vulnerable communities will disappear and on the other, from libertarians who are worried about a watering-down of the Coalition's election promises about free speech.
Section 18C of the Act makes it illegal to offend, insult, humiliate or intimidate another person or a group on the basis of their race, colour or national or ethnic origin.
To discuss why there's so much at stake I was joined a short time ago by the new Human Rights Commissioner Tim Wilson, formerly with the Institute of Public Affairs and by Jeremy Jones, from the Australia, Israel and Jewish Affairs Council.
Gentlemen, thank you for joining me.
Jeremy Jones, why is the Attorney-General wrong to look at appealing section 18C of the Racial Discrimination Act?
JEREMY JONES, AUSTRALIA/ISRAEL AND JEWISH AFFAIRS COUNCIL: Well, I think there's a basic principle. Whatever law you have it's always good to review it. You don't just say because I think it's law it always has to be the law. When we look at how it's operated over close to 18 years now, I think there's a very strong argument to say we have a law which has basically served the cause for which it was designed very well. It was a law that became about after a lot of investigation and inquiry and debate.
It was a compromise between a range of different positions which tried to bring a balance between the protection of victims of racism and other important values such as free speech and to revise the look to improve the law is great but if the law was to disappear completely I think there'd be a big hole in protections for vulnerable sections of the Australian community.
TICKY FULLERTON: Tim Wilson, on the other end of things is there any kind of free speech that you believe should be constrained by law?
TIM WILSON, HUMAN RIGHTS COMMISSIONER: Of course. We know full well that human rights come into conflict with other human rights including the human right of free speech. And we have that in lots of areas of law so it's not a debate about whether there are limitations on free speech. It's not even a debate about whether racism is socially acceptable. It's a debate about where the line of free speech should sit and what sort of conduct should be socially unacceptable versus where the law should stand and make it illegal and there always needs to be a gap between those two propositions when we're talking about speech, because when they're fused, as section 18C really does operate that way, you ultimately can't challenge the status quo.
TICKY FULLERTON: Well, let me take the issue of Holocaust denial. Now, Jeremy Jones we don't have a specific crime against Holocaust denial in Australia as I think there is in Germany. Has the Racial Discrimination Act been used successfully to prosecute people in this area?
JEREMY JONES: They're not prosecuted because of merely a thought, because of merely saying something which somebody find objectionable. It's behaviour which goes beyond a thought. There has been the case, the most notorious case in terms of publicity and known about was the case of Frederick Tobin a man in Adelaide who ran a web site at the time called the Adelaide Institute. Had was found after a complaint to have involved himself and indulged in a whole series of behaviours which brought him into conflict with 18C.
It brought him into conflict because what he was doing was he was saying that people have constructed conspiracy of sorts to make you believe something which is not in your interests, therefore you should have a certain attitude towards those people.
TICKY FULLERTON: And it was 18C that was used?
JEREMY JONES: 18C was used. I was the complainant in that case. I'm very familiar with that case, obviously.
TICKY FULLERTON: That was when you were the executive council of...
JEREMY JONES: Australian Jury, yes. In that capacity.
So we brought that case against Frederick Tobin because there had been quite a number of people who said we've tried to use logic, you've tried to ask somebody to restrain themselves in their behaviour, but until laws were available and until people could lodge complaints under the law, there didn't seem to be any way that this behaviour was going to be stopped in any way. There was no way an ordinary person would have the ability to know whether a person was doing something to be part of a public debate, putting information out there or part of an academic debate or indulging themselves in behaviour which was seen by the courts to be aimed at people because of their race ethnicity etc.
TICKY FULLERTON: So Tim Wilson do, you see Holocaust denial as a crime?
TIM WILSON: Both Jeremy and I have a very similar view about Holocaust denial. We think that people who express those views have hate in their heart and the question isn't what you - whether they should be responded to. Of course they should be responded to. The question is how.
TICKY FULLERTON: Do you see it as a crime under the law?
TIM WILSON: I don't see it as being a justification for a crime, because in the end, if Dr Tobin or others decide to continue to express their hate, or if they don't and they're put into their corner, they don't disappear hand they don't change their views. And I actually have much more faith in the average Australian citizen that people do understand just how absurd ridiculous and preposterous some of those ideas are. People are able to assess the credibility of someone as discredited and irrelevant as that individual and the ideas they put out there. It doesn't need to be shut down with law. What we need is more speech and more reason to come out to challenge it.
TICKY FULLERTON: What about the is slippery slope argument? I see the Race Discrimination Commissioner, he fears abolishing 18C can licence racial hatred and may unleash a darker even violent side of our humanity which revels in the humiliation of the vulnerable. Isn't that a genuine fear?
TIM WILSON: People have legitimate concerns but the question is again how we're tackling racism in society and the question is to you use the law to try to limit what people can say or do you seek to respond to it by driving education and cultural change. When you have the law and the line of polite society or socially acceptable conduct at the same point it's always very difficult to do that particularly in a country like Australia.
We sit in a very unique position. In our constitution, we have a provision which actually allows the government, which I have to say I object to this provision very strongly, allowing the Federal Parliament to design laws specifically for people of different races which automatically brings it within the centre of Australian political discussion and debate.
We need to be able to fully debate that. We're acknowledging the fact that sometimes people will say things that are unpleasant that they should be responded to by all of them.
TICKY FULLERTON: Jeremy Jones, to you worry like the racial Discrimination Commissioner worries about the slippery slope?
JEREMY JONES: We have to look at the reality of the situation. For many years we did not have the law in place, for 18 years we have. Before the law came into place, there were inquiries and investigation business what was the best play in the Australian context to deal with a real identified problem of people who were taking away from the quality of life of other Australians, were humiliating people, were bringing into question their own selves and their own self-worth and their worries about other people and what people thought. After these investigations, after the inquiries, after extensive debate looking at not only what happened in Australia, but world best practice, the Australian Government adopted a set of laws which included not only 18C, which the provisions against racial hatred, but also 18 D which is a range of exemptions.
Since that time we've had a series of cases and when we look at the situation before the law came in, and since, you could say that the law has acted to do exactly

what Tim is saying we need, which is providing the argument against those - the people who will otherwise not listen to reason, and I don't agree that you can automatically say that it's self-evident that somebody like a Holocaust denier is bad. It took the court case to go through to identify what was wrong with the argument and it was because of the judgment that this was seen to be something abhorrent.

TICKY FULLERTON: So Tim Wilson it seems to me that really what this debate is about is at what point free speech becomes hate speech. Only a few months ago in Bondi we had racial attacks on Jewish people. At what point do you think free speech becomes hate speech?

TIM WILSON: Well, I think the issue at hand isn't where it becomes free speech and hate speech. Hate speech in itself is connecting a crime to its thought and in itself that is a violation of people's rights.

The line of the law should be around incitement to violence not around when somebody says something and you don't like their tone or you don't like their attitude or anything else. Now that doesn't mean that somehow that means carte blanche and almost a licence for racial vilification or hatred.

We're forgetting one very important part of the discussion. Which is that rights come with responsibilities. And it's a responsibility, one of every Australian to challenge these sorts of ideas but that actually you need to have that gap between the law and social convention so that people can exercise those responsibilities so we can drive a more culturally accepting and diverse community and to challenge the sorts of ideas and racism, exactly as Jeremy just outlined but I have to pick up the last point which is I just find it absurd to think that people didn't think that Holocaust denial was unacceptable until the Racial Discrimination Act and 18C came into place I it's been an absurd proposition since the day it was forward.

TICKY FULLERTON: But it was affected on wasn't it?

TIM WILSON: Affected on, you mean legislated? In a legal sense, yes it was. But it's not as though everybody was saying this is good idea, these people are crazy and people know these people are crazy and they're quite capable of making judgements that way.

JEREMY JONES: I didn't see any evidence to back that proposition in any area where the law's been applied. If we look at some of the cases at the real cases that have happened under real law because we've only really heard objection of one case.

One case has been identified as the problem. There've been 1600 or so complaints which have gone before the commission. Many of them have been conciliated many of them have not succeeded because it's a reasonably high standard of proof for somebody to be able to carry through. Some others have gone to court.

We look at a case, I want to say for an example, there was a situation where there was a person who was putting out hateful material in the forms of leaflets, cassettes and videos and booklets for quite a while. People would try to stop here.

She would go to a garage sale - a car boot sale, sell material and people would say you can't do this here because you're objectionable. She would say I have my right to do it. You have to allow me to do it or I will take the law against you because you're restraining my trade, stopping me doing something fair and reasonable. It was only when there was law she was able to be stopped.

I've spoken to individuals who were in the situation where they say they're a professional in this case a real case, it was a dentist. He said his nurse has seen this material. His customers are seeing material which is presenting a template that every evil in the world is attributable to the group to which he belongs. He doesn't know what people are thinking about him. He knows that nobody is doing anything to stop it and there didn't seem to be a way to stop it until we had a law that allowed it to be stopped.

TICKY FULLERTON: Let me bring in at this point Andrew Bolt. Because this 18C is now really known as Bolt's Law after the case of the columnist. Tim Wilson, what were your concerns about that judgment?

TIM WILSON: My concerns were the way it was applied and ultimately that goes back to the way it was written. Where what we had was an assessment where Mr Bolt was found to have been in breach of the Act because based on the standards of the individual in the community that was the reference of his article, it was deemed he had achieved, insult, offence, humiliate and intimidate around a legitimate area of public policy debate. Now, Mr Bolt made a number of errors. He also - the judge read into it an issue around tone. These things are very bad judges about whether people can limit free expression.

TICKY FULLERTON: Well that is why this has boiled down to now an argument between whether this was about freedom of opinion or about freedom to spread untruths. What's your view?

JEREMY JONES: I think it's very bad to talk about this as the Bolt case given all the hundreds of cases that have been lodged and the number that have been adjudicated. Andrew Bolt in a sense is the exceptionable case. I don't think there - that's not a reason to ignore the case but to characterise the law as if the Andrew Bolt case was somehow typical is wrong. I also think it's unfair to Andrew Bolt to deal with it that way because Andrew Bolt himself has said on a number of occasions that his intention was not how it was interpreted which by the courts and under the law. This is quite different from many. Other cases that have come before the judges. So I just want to say that's a point I think that's very important when we are looking at the law. Look at how it's worked effectively and then if there has been a road bump and I don't mean with any disrespect to Andrew Bolt because of course it's very significant to him. I don't in any way denigrate people who have a view which is you could see a free speech absolutist position which I personally don't hold ...

TICKY FULLERTON: Are we now getting a clear view from the Attorney-General George Brandis as to just what he wants to do with 18C. There seems to be some confusion now as to whether he is backing off, repealing all of it or perhaps leaving some of it. What is your take on that?

JEREMY JONES: We've seen George Brandis and the current government during the election campaign saying they would repeal the law as it was but there was also the concept of having consultation and talking about the law which seems to indicate quite clearly there is a recognition the government has some role in allowing victims of racism some recourse.

And not having a return to a situation before there was any law which gave victims some standing and not getting into a situation where suddenly you are taking away something which is valuable to many people in the community, I'm sure there are many members of Parliament in the government side who are hearing from their own community that there's a signal they don't want send if this law is repealed completely.

What we're seeing is the government say here's the law, we've identified a problem or we don't want a recurrence of a particular outcome in a particular case no. You we're going to try to get the plans to make sure the government is responsible and that gives us its protections to people who need protection while at the same time, doing its utmost to have a situation where there aren't unintended consequences.

TICKY FULLERTON: What's your view on where George Brandis sit and also it looks as though he's looking to change Criminal Code as well. He wants to make racial vilification a crime now.

TIM WILSON: I'm deeply concerned about the idea that racial vilification be made a crime versus a civil provision as at the moment. This is why the argument that somehow it will be a licence to do things like engage in violence is absurd because it's racial violence is already illegal under the Criminal Code.

The issue really comes down to whether this provision and the way section 18C is designed, is designed to not unnecessarily limit free speech. The Bolt case proved it was in the way it was interpreted but it has much broader issues around establishing group rights within the community, about the subjective

nature of the test, about being reasonably likely to offend insult et cetera.
It needs a wholesale review in my opinion, repeal, because the elements of it that may be necessary to protect things like violence exist in other laws already.
TICKY FULLERTON: Finally, can I ask you Jeremy Jones, given Tim Wilson's libertarian views, frankly how do you feel about bill becoming the new Human Rights Commissioner?
JEREMY JONES: Well, there are human rights and I have no objection to Tim Wilson having a position in the government and doing - protecting rights. There are lots of rights for a Human Rights Commissioner to protect. When Chris Sidoti had the position some time ago he was looking at religious freedom which I think is very important right.
Brian Burdekin looks at children's rights at a time nobody was. But I have to say with the last comment from Tim Wilson if I may, we in Australia have defamation laws. If somebody accuses me personally of certain behaviour, I have the right to defend my reputation especially if it's damaging my ability to be part of society. To say that someone in a group shouldn't have that right so they say the group I belong to are automatically criminal and I have no rights but I am a criminal suddenly I have rights seems to me to be confusing.
TIM WILSON: We need to clarify that the issue with defamation law is it's actually a competition between rights and we need to find accommodation. I've said exactly the same thing should exist in the situation of free speech. It's where that line is and we obviously have a difference of opinion. The important thing is we're having this debate and it will be up to the Parliament to decide.
TICKY FULLERTON: It's all about drawing the line - a very tense debate. Tim Wilson, Jeremy Jones thank you very much for joining me.
JEREMY JONES: Thank you.
TIM WILSON: Thank you.
http://www.abc.net.au/lateline/content/2014/s3963918.htm

Ivory towers shaken by man free of legal baggage

JANET ALBRECHTSEN, THE AUSTRALIAN, MARCH 19, 2014 12:00AM

WHEN Tim Wilson was appointed Freedom Commissioner late last year the legal bitchiness was all too predictable. His critics latched on to the lack of a law degree on Wilson's CV as reason enough to slam his appointment to the Australian Human Rights Commission.

Legal academic Ben Saul admonished the appointment because Wilson "has no serious background in human rights". One Human Rights Commission employee said Wilson "has done no law … he has no technical qualifications in this field at all".

Well, thank goodness for that. Less than six months into his job, it is becoming more and more obvious that Wilson's non-legal background is a boon to freedom in this country.

Take last Friday night when Wilson was interviewed on *Lateline* about section 18C of the Racial Discrimination Act which makes it illegal to offend, insult, humiliate or intimidate someone or a group on the grounds of race or ethnicity. Wilson showed he understands something rarely articulated in the discussion about free speech. As he said, when we are debating where to draw the line between law and social norms, between what the law should prohibit and what we, as a society, deem to be socially unacceptable, Wilson said "there always needs to be a gap between those two propositions when you're talking about speech because when they're fused, as section 18C … does … you ultimately can't challenge the status quo".

That gap is where the debate takes place. More importantly, it's in that gap between where the law sits and social norms operate where we exercise the responsibilities that come with rights.

It goes without saying that not all of us will exercise our responsibilities in the same way. People will be offended. Some will be humiliated and insulted and even intimidated. But when we extend the sledgehammer of the law into the realm of social norms, you sideline individual responsibility, human judgment and the power of civil society to frown on unacceptable speech. If there is no gap or the gap is too small, you treat people like infants in need of laws to dictate every more and civil nicety. By repealing laws such as section 18C, you encourage people to exercise responsibilities alongside their rights.

Unfortunately, the default position of lawyers and legal academics is more, not fewer, laws. Some do it for mercenary reasons, a kind of make-work scheme that will ensure they are well remunerated until retirement. Others have a more philosophical attachment to laws as the necessary means to regulate every aspect of society, viewing people as too stupid to interact with each other without laws telling us how to do so.

Either way, it means that when lawyers are in charge you can expect more laws. In the realm of free speech, that means more restrictions on our most fundamental freedom to express ourselves.

When Wilson was appointed Freedom Commissioner late last year, HRC boss and legal academic Gillian Triggs said it was all very good to defend free speech, but that the only effective way to do so would require more legislation, such as a bill of rights. In other words, more laws where judges are given the power to determine the definition and application of rights, including a right to free speech.

Lawyers, especially human rights lawyers such as Triggs, begin from the wrong philosophical start point when thinking about human rights. Believing that government must sit at the centre of our lives, telling us daily how to live, they assume that rights are bestowed on us by laws enacted by government. For them human rights are found in laws such as the RDA and lofty declarations by the United Nations. And too often this kind of thinking infects our schools, leading the next generation to fall for the same tosh that rights are gifted to us by government.

In fact, rights are bestowed on us by virtue of our humanity. Within limits we all understand, we have the right to do what we damn well please — including express ourselves as we see fit — and government must make the case to limit our rights. Coming to human rights without the baggage of a law degree, Wilson understands that the gap between law and what is socially acceptable is the critical realm where responsibility is exercised. This is what it means to be a human being — making decisions, exercising our judgment. It's a view of rights and responsibilities that empowers us rather than heavy-handed laws that infantilise us.

Jeremy Jones, from the Australia/Israel and Jewish Affairs Council, was Wilson's intellectual sparring partner on *Lateline* and unwittingly gave us the perfect example of this on Friday night. He said it took a court case to identify what was wrong with the Holocaust denials of Frederick Tobin: "It was because of the (legal) judgment that this (Holocaust denial) was seen to be something abhorrent," said Jones.

This position, that we need laws such as 18C in the RDA and courts to tell us that Holocaust denial is abhorrent, treats us like idiots, too stupid to work that out for ourselves. When laws creep into the realm where civil society operates, they inhibit the power of robust debate to prove wrong views such as Tobin's.

While self-important human rights lawyers perched in their legal ivory towers treat us as infants in need of laws that prohibit comments that offend, insult, humiliate or intimidate us, Wilson's view of human beings is one about empowerment.

It's grounded in the real and robust world of feisty debate and human judgment.
To be sure, it's early days, but a first-term report card suggests Wilson is doing well in this new position as Freedom Commissioner. He scored early high marks for upsetting the legal and human rights status quo. And he has continued to earn marks in the cause for freedom for talking less about laws and more about people exercising their rights along with responsibilities.

janeta@bigpond.net.au

http://www.theaustralian.com.au/opinion/columnists/ivory-towers-shaken-by-man-free-of-legal-baggage/story-e6frg7bo-1226858429296#

Community leaders reject mooted changes to race hate laws

March 18, 2014 by J-Wire Staff

Representatives of the Indigenous, Greek, Jewish, Chinese, Arab, Armenian and Korean communities have expressed their "vehement opposition" to changes that have been mooted to sections of the Racial Discrimination Act which prohibit public conduct that is reasonably likely to "offend, insult, humiliate or intimidate" a person or groups because of their skin colour or national or ethnic origin.
The group of representatives, including The Executive Council of Australian Jewry, was reacting to a story which appeared in The Australian today speculating that the Federal government proposes to remove the words "offend, insult, humiliate" from section 18C, as well as removing the requirement that a defendant must have acted "reasonably and in good faith" in order to be covered by the free speech defences available under section 18D.

Peter Wertheim

"These changes would mean that the Federal government has decided to license the public humiliation of people because of their race", said Peter Wertheim, the Executive Director of the Executive Council of Australian Jewry. "It would send a signal that people may spout racist abuse in public, no matter how unreasonably and dishonestly. It would be astonishing if an Australian government in the 21st century was prepared to embrace such a morally repugnant position. It would be utterly indefensible. The suggestion that section 18D might be amended by deleting the threshold of reasonableness and good faith comes as an especially unpleasant surprise to us".
The group, which has been pursuing a vigorous campaign to dissuade Federal politicians against any repeal or watering down of Australia's laws against racial vilification, vowed to step up its activities.
"The Racial Discrimination Act is one of Australia's most iconic pieces of legislation. It goes to the heart of Australia's identity as a nation that is both democratic and culturally diverse. The law ought not to be changed unless there are truly compelling reasons. The outcome of one contentious case falls a long way short in that regard", Mr Wertheim said.
"Australia's long term national interests in maintaining a harmonious society and the respect of neighbouring countries are being sacrificed on the altar of political expediency in order to score points in the so-called 'culture wars'. It will leave a lasting stain on the legacy of the present government if they proceed with this", Mr Wertheim predicted.
"The existing sections 18C and 18D were enacted in1995 after three national inquiries in Australia found that there is a nexus between racially vilifying conduct in public and racially-motivated violence. The two sections strike a careful balance between freedom from racial vilification and freedom of expression".
"Once people understand that the existing law only applies to serious cases and requires an objective test to be satisfied based on community standards, rather than a subject test based on hurt feelings, it becomes clear that the current law is about enabling targeted groups to defend themselves against racial vilification and has nothing to do with limiting free speech."
"The law does not stop anybody from offending, insulting or humiliating others because of their conduct, opinions or beliefs. People can change their conduct, opinions or beliefs. But the current law does prohibit publicly offending, insulting or humiliating others because of their race, which is something people cannot change. Offending, insulting or humiliating other people because of their race is not about persuasion. It's about attacking their human dignity"', Mr Wertheim added.
It is expected that the government will table draft legislation before the Parliament within the next fortnight.
"The more extensive the proposed changes are, the stiffer the opposition to it will be", Mr Wertheim predicted.
Endorsed by:
Ms Kirstie Parker, Co-chair, National Congress of Australia's First Peoples
Mr Les Malezer, Co-chair, National Congress of Australia's First Peoples
Mr Vache Kahramanian, Executive Director, Armenian National Committee of Australia
Ms Randa Kattan, CEO, Arab Council Australia
Mr Tony Pang, Secretary, Chinese Australian Services Society
Mr Luke Song, Korean Society of Sydney
Mr George Vellis, Co-ordinator, Australian Hellenic Council
Mr Patrick Voon, President, Chinese Australian Forum
Mr Peter Wertheim, Executive Director, Executive Council of Australian Jewry

http://www.jwire.com.au/news/community-leaders-reject-mooted-changes-to-race-hate-laws/41205

Abbott pressured to back down on discrimination law

By Kathy Marks, 15 AM Saturday Mar 22, 2014

During last year's election campaign, Tony Abbott pledged to change the law under which one of his staunchest supporters, the right-wing columnist Andrew Bolt, was convicted of racial discrimination for accusing nine fair-skinned prominent Australians of claiming to be Aborigines to secure jobs, awards and grants.

Now, under pressure from both sides of the political spectrum, Abbott may be ruing that promise to repeal or water down a piece of legislation that even his mentor and predecessor, John Howard, chose to leave intact.
Conservative Coalition MPs - backed by the right-wing Institute of Public Affairs and commentators including Bolt

himself - want the Attorney-General, George Brandis, to scrap a section of the Racial Discrimination Act that makes it illegal to "offend, insult, humiliate or intimidate" a person on grounds of race.

Tony Abbott. Photo / AP

However, ethnic community groups are horrified by that prospect, as are some Coalition politicians. The Liberal MP Ken Wyatt, the first indigenous member of the House of Representatives, has threatened to cross the floor, and Warren Mundine, who heads Abbott's Indigenous Advisory Council, has warned him he is "heading down the wrong track".

Bolt, meanwhile, is fuming over fresh claims of racism, aired by one of Australia's most respected indigenous figures, Marcia Langton. Langton, who spoke out on the ABC TV discussion programme Q&A last week, subsequently apologised to the News Corp columnist for offending him, but added that "his obsessive writing about the colour of the skin of particular Aboriginal people is malicious and cowardly".

The 2011 Federal Court case followed a series of articles and blogs in which Bolt questioned the motives of people who identified themselves as Aboriginal despite having mixed-race heritage. He described the Sydney academic and author Larissa Behrendt as a "professional Aborigine", and observed that the artist Bindi Cole had chosen "the one identity open to her that has political and career clout".

Scandalised by his conviction, Bolt and his supporters denounced the law as an intolerable brake on free speech.

In an address to the Institute of Public Affairs in 2012, Abbott declared that free speech meant "the freedom to write badly and rudely ... the freedom to be obnoxious and objectionable".

Critics, though, note that the provisions now known as the "Bolt laws" have worked well for nearly 20 years, and that Bolt was found guilty not because he exercised his right to free speech but because of factual errors that prevented him from successfully deploying the defence that the articles were written "in good faith".

Brandis is now reportedly considering a compromise that would remove the words "offend" and "insult" from the relevant section, but leave "humiliate" and "intimidate". That has infuriated the institute and conservative soulmates, who want nothing less than repeal.

In the Coalition partyroom, though, the Attorney-General has faced calls for moderation not only from Wyatt but from Philip Ruddock, the veteran Liberal MP and former Howard minister, and Craig Laundy, who holds the ethnically diverse seat of Reid, in Sydney's western suburbs.

Meanwhile, a broad alliance of community groups - representing the Greek, Jewish, Chinese, Arab, Armenian and Korean communities - believes that any change to the law would "license the public humiliation of people because of their race" and "send a signal that people may spout racist abuse in public".

They say it would be "astonishing if an Australian government in the 21st century was prepared to embrace such a morally repugnant position". The groups also warn that ethnic harmony is "being sacrificed on the altar of political expediency in order to score points in the so-called culture wars".

During a Q&A discussion of the law and proposed reforms, Langton - one of Bolt's fiercest critics - called him a "fool" who believed in "race theories". She also claimed he had subjected an Aboriginal academic at the University of Melbourne, Misty Jenkins, to "foul ... racial abuse", as a result of which Jenkins had withdrawn from public life.

Bolt was "so bruised" by this attack, which he "watched in horror", he wrote in a column later that week, that he could not face going into work the next day. His wife was urging him to "play safe" [in his public views], and "this time I'm listening", he said. "Do I resist or run?" he concluded.

While some Australians may have felt they knew the answer to that question, the ABC - perhaps cowed by the government's relentless criticism of late - took the unusual step of apologising to Bolt on air. However, that did not satisfy the columnist, who called it "the smallest apology it could get away with".

The ABC is being sued by another arch-conservative columnist, Chris Kenny, after he was depicted having sex with a dog. Abbott condemned the public broadcaster for defending the defamation action, saying it should apologise to Kenny instead.

- NZ Herald

http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11224146

Editorial

Free speech is a principle to be upheld consistently

THE AUSTRALIAN, MARCH 06, 2014 12:00AM

A FREE and robust exchange of ideas is essential to democracy, especially in academe where open-minded inquiry is paramount. There is no doubt, as visiting Hebrew University political scientist Dan Avnon said on Tuesday, that Sydney University academic Jake Lynch deserves a "red card" for refusing to sponsor him out of support for the nefarious Boycott, Divestment and Sanctions campaign against Israel.

Professor Lynch's stance has eroded the credibility of Sydney University's so-called Centre for Peace and Conflict Studies. Along with Australia's Jewish community, sensible people welcome Professor Avnon's Sir Zelman Cowen scholarship at Sydney University's Institute for Democracy and Human Rights. His civics curriculum for Israeli high school students from Jewish and Arab backgrounds, taught under the same roof, shows he has much to offer.

A vital principle - upholding the free exchange of views - lies at the heart of the row over Professor Lynch's objectionable behaviour. The same principle should also apply in the community, which is why supporters of the restrictive Section 18C of the Racial Discrimination Act, including the Australia/Israel & Jewish Affairs Council, would be wise to think again.

Chinese, Vietnamese, Lebanese and Islamic leaders have also called for the "Andrew Bolt" provisions of the act to be left in place. Recently, Attorney-General George Brandis said that after consulting stakeholders, the government would honour its promise to remove them because they unreasonably penalised freedom of speech. This is the right decision. Causing offence should not be a crime.

In 2011, the Federal Court ruled that News Limited columnist Andrew Bolt's commentary about light-skinned Aborigines seeking advantage based on their heritage amounted to unlawful racial vilification. The court found Bolt guilty because the complainants were likely to have been "offended, insulted,

humiliated or intimidated". However provocative Bolt's words, causing offence is not vilification. And similar sentiments to Bolt's are not uncommon among indigenous people themselves.

Such legislative and judicial overkill, as Human Rights Commissioner Tim Wilson argues, has shut down public debate for no better reason than "someone's tone could be deemed inappropriate". It is understandable that community leaders support laws they believe protect their communities. The safety, opportunities and reputations of all Australians, however, are well protected by criminal, defamation and discrimination laws.

The concept of free speech has been grounded in Enlightenment principles for more than 300 years. It covers not only those with whom we agree, but those with whom we disagree, often vehemently. That is why *The Australian* has supported the rights of Holocaust denier David Irving and Dutch anti-Islam MP Geert Wilders to visit Australia, however offensive their messages.

Over time, strictures on free speech merely drive racism underground where it becomes more dangerous, away from public scrutiny. Free speech serves the interests of all, especially those at risk of racism. As champions of democracy, Jewish leaders who stood up for Professor Avnon's rights would take a valuable lead if they broadened their defence of free speech.

http://www.theaustralian.com.au/opinion/editorials/free-speech-is-a-principle-to-beupheldconsistently/story-e6frg71x-1226846377879

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AIJAC and *The Australian*

March 10, 2014 by admin

The Australia/Israel and Jewish Affairs Council has responded to an editorial in *The Australian* supporting the repeal of Section 18C of the Race Discrimination Act. Executive director of AIJAC Dr Colin Rubenstein sent the following letter to *The Australian*:

Your editorial (6/3) correctly states that, "A free and robust exchange of ideas is essential to democracy" and laudably chastises University of Sydney academic Jake Lynch for attempting to stifle any such exchange via his discriminatory boycotts of Israeli academics. However, its call for the Australia/Israel & Jewish Affairs council to also abandon our support for section 18C of the Racial Discrimination Act was a complete non-sequiter.

18C poses no threat to the exchange of ideas in democracy. It makes no ideas unlawful – it is concerned only with conduct done because of someone's race which would cause them "serious and profound" emotional harm. It offers extremely robust defences in section 18D exempting all academic, artistic and scientific work, and any statement, publication or discussion done for any genuine purpose in the public interest.

Your editorial's assertion that, "Causing offence should not be a crime" involves a complete misunderstanding of how this legislation actually works. 18C creates no criminal offences - its purpose is to give civil recourse to people when bigots diminish the quality of their lives through deliberate racial harassment and intimidation, primarily through conciliation.

If the *Australian* is genuinely concerned about laws which create a "crime" of causing offense, their ire would be better directed at the various state Summary Offences Acts, all of which criminalise "offensive language".

18C's impact should be seen as a whole over its 18 year history and the numerous cases in which it has been employed and not through the singular prism of the Bolt case. **The provision has been used effectively against some of the most toxic individuals in this country, and has thus repeatedly contributed constructively to social cohesion and harmony in Australia.** [Emph. added – ed. AI.] While we remain open to a review of the law and perhaps modest changes designed to enhance its effectiveness, 18C has been a lynch pin of Australia's successful multicultural project, and to remove it entirely is likely to give succour to racists and return victims of racial victimisation to a situation where they have no legal recourse.

The letter was edited.

http://www.jwire.com.au/news/aijacandtheaustralian/41027

ABC TV - Q&A

Vilification, Discrimination & Defamation

Monday 10 March, 2014

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TONY JONES: Chris Bowen?

CHRIS BOWEN: I think this is deeply concerning. Now, if you listen to George Brandis and accept that frame, you'd think this was the only restriction on freedom of speech in Australia and, of course, that's a nonsense. None of us can defame each other tonight. None of us can say something which is untrue and outrageous. There is a restriction on freedom of speech. If you're in business, you can't engage in misleading conduct. As a member of Parliament, I can't come in here and say the Speaker is biased. I would be in contempt of the Parliament. So of course there are restrictions in a modern society on freedom of speech and this is a very important protection. Why? Because we don't want a society where it's okay to insult somebody because of their race and this law has a history. It wasn't introduced for fun. It was introduced as a result of a recommendation, a royal commission, into racial violence because racial vilification leads to racial violence. We don't want to live in a society where that's regarded as okay and this really just balances up the ledger a bit. If you're a person who isn't very powerful and you're in a situation where you're vilified, this gives you a chance to have a say. Most cases don't even get to court. They get conciliated and they're sorted out in a room where a person says, "You can't talk to me like that or about me like that."

And we hear a lot about the Bolt case. Well, I don't want to have a situation in Australia where things like the Toben case are acceptable. Where somebody can say the Holocaust was made up as part of a Jewish conspiracy and that's all right. It's not okay. It's not all right.

TONY JONES: You're not putting Andrew Bolt's comments and Holocaust deniers in the same...

CHRIS BOWEN: No. No. No. Well, they've both - but they've both been dealt with under this clause of the Act. That's the point I'm making and that is not okay for that to be allowed to happen in Australia. People have a right to be respected and not to be insulted because of their race or nationality. And it's not just simply the person involved who has to take offence. A

judge has to decide that a reasonable person would take offence. That's quite a hard test and judges have said that this would have to be a very serious thing that was said, not something trivial and there are also protections in the Act for matters of art and scientific discovery and...

TONY JONES: Chris, I'm sorry, I'm going to interrupt you because we've got a few people with their hands up. I will just quickly go to that young lady down on the floor there. She had her hand up for a while. Go ahead.

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Andrew Bolt

Australia's most read columnist

ANDREW BOLT, HERALD SUN, MARCH 13, 2014 2:07PM

It feels like I have lost; do I run or resist?

The Q & A panel: Lisa Wilkinson, George Brandis, Marcia Langton and host Tony Jones. *Source:*ABC

STRANGE, after all I've been through, but Monday on the ABC may have been finally too much for me.

You see, I was denounced on *Q & A* — on national television — as a racist. I watched in horror as Aboriginal academic Marcia Langton falsely accused me of subjecting one of her colleagues — "very fair-skinned, like my children" — to "foul abuse ... simply racial abuse".

Langton falsely claimed I was a "fool" who believed in "race theories" and had "argued that (her colleague) had no right to claim that she was Aboriginal". I had so hurt this woman she "withdrew from public life" and had given up working with students (something seemingly contradicted by the CV on her website).

FULL TRANSCRIPT: Marcia Langton's apology

And when Attorney-General George Brandis hotly insisted I was not racist, the ABC audience laughed in derision. Not one other panellist protested against this lynching. In fact, host Tony Jones asked Brandis to defend "those sort of facts" and Channel 9 host Lisa Wilkinson accused me of "bullying". And all panellists agreed Brandis should drop the government's plan to loosen the Racial Discrimination Act's restrictions on free speech, which the RDA used to ban two of my articles. Can the Abbott Government resist the pressure from ethnic and religious groups to back off?

So it feels I've lost, and not just this argument. I feel now the pressure to stop resisting the Government's plan to change the Constitution to recognise Aborigines as the first people here — a dangerous change, which divides us according to the "race" of some of our ancestors.

My wife now wants me to play safe and stop fighting this new racism, and this time I'm listening. This time I was so bruised by Q & A that I didn't go into work on Tuesday. I couldn't stand any sympathy — which you get only when you're meant to feel hurt.

It was scarifying, even worse than when a Jewish human rights lawyer told a Jewish Federal Court judge that my kind of thinking was "exactly the kind of thing that led to the Nuremberg race laws" and the Holocaust — a ghastly smear published in most leading newspapers. That time, at least, half a dozen Jewish and Israeli community leaders and officials, who knew my strong support for their community, privately assured me such comments were outrageous and the attempt by a group of Aboriginal academics, artists and activists to silence me wrong.

True, none said so publicly for the next two years for fear of discrediting the RDA, which they hope protects them, yet it was some consolation.

But this?

How could I have failed so completely to convince so many people that I am actually fighting exactly what I'm accused of? The country's most notorious racist today is someone whose most infamous article, now banned by the Federal Court for the offence it gave "fair-skinned Aborigines", actually argued against divisions of "race" and the fashionable insistence on racial "identity".

It ended with a paragraph the court does not let me repeat, but which I will paraphrase as precisely as my lawyer allows: Let us go beyond racial pride. Let us go beyond black and white. Let us be proud only of being human beings set on this country together, determined to find what unites us and not to invent racist excuses to divide.

Yet I am not asking for your sympathy. My critics will say I'm getting no more than what I gave out — except, of course,

this is more vile and there's no law against abusing me, or none I'd use.
No, what's made me saddest is the fear I'm losing and our country will be muzzled and divided on the bloody lines of race.
I worry, for instance, for the kind of person who turned up in the *Q & A* audience on Monday and still dared ask why so much land was being returned to Aborigines when "really we're all here, we're all Australians".
He was shown the lash just used to beat me. He was corrected (rightly) for overstating the effect of land rights laws but reprimanded (wrongly) for allegedly ignoring Aboriginal disadvantage, as if he were some, you know, racist.
No panellist addressed his deepest concern, that we are indeed all in this together, yet find ourselves being formally divided by race and by people only too keen to play the race card against those who object.
Langton is an exemplar of those who use the cry of "racist" not to protect people from abuse but ideas from challenge. She's accused even feminist Germaine Greer of a "racist attack" for criticising Langton's support for federal intervention in Aboriginal communities.
She accused warming alarmist Tim Flannery of making a "racist assumption" in arguing wilderness was "not always safe" under Aboriginal ownership and when Labor lawyer Josh Bornstein protested, she slimed him as a racist, too: "Doodums. Did the nig nog speak back?"
And three years ago Langton wrote an article in *The Age* falsely claiming I believed in a "master race" and "racial hygiene" — like the Nazis.
It was a public vilification for which she privately apologised two years ago, but never publicly.
Instead, she now accuses me of this "foul abuse" of her colleague, Dr Misty Jenkins, in a column six years ago.
HER allegations are utterly false. My column, written before my now-banned articles, was on the groupthink Leftism at Melbourne University, of which I gave many examples.
I wrote: "Read the latest issue of ... the university's alumni magazine ... The cover story argues that the mainly black murderers (in the Deep South) ... are victims ... Page two promotes Kevin Rudd's apology ... Page three announces that Davis has picked … global warming alarmist Ross Garnaut, as one of his Vice-Chancellor's Fellows.
"Page four has a feature on Dr Misty Jenkins, a blonde and pale science PhD who calls herself Aboriginal and enthuses: 'I was able to watch the coverage of Kevin Rudd's (sorry) speech with tears rolling down my cheeks ... Recognition of the atrocities caused by Australian government policies was well overdue' ...
"Pages six and seven boast that the university hosted Rudd's 'first major policy conference' ... You get the message."
Where's the "foul abuse", Marcia? Where have I "argued that [Jenkins] had no right to claim that she was Aboriginal" — something I have never believed and never said of anyone?
But that's our retribalised Australia. Criticise the opinions of someone of an ethnic minority and you're ripe for sliming as a racist.
How dangerous this retreat to ethnic identities and what an insult to our individuality. And how blind are its prophets. Take Lisa Wilkinson, who actually uttered the most racist sentiment of the night, accusing Brandis of being a "white, able-bodied heterosexual male" suggesting this was "part of the reason why you can't sympathise" with victims of racism.
White men can't sympathise? Pardon?
And so today's anti-racists become what they claim they oppose. Do I resist or run?
http://www.heraldsun.com.au/news/opinion/it-feels-like-i-have-lost-do-i-run-or-resist/story-fni0ffxg-1226852869552

MP risks conflict over race reforms

JARED OWENS, THE AUSTRALIAN, MARCH 24, 2014 12:00AM

THE Coalition's only Jewish MP, Josh Frydenberg, has risked a conflict with Jewish leaders by backing his government's reforms to the Racial Discrimination Act.
The government has promised to overhaul section 18C of the act, which prohibits remarks reasonably likely to offend, insult, humiliate or intimidate on the grounds of race or ethnicity.
It aims to remove the provision that resulted in a 2012 court finding against newspaper columnist Andrew Bolt for an article criticising prominent fair-skinned indigenous Australians.
Attorney-General George Brandis is preparing the legislation, although The Australian has been told the bill will not be introduced to parliament before the budget in May.
Interviewed by Bolt on the Ten Network yesterday, Mr Frydenberg acknowledged Jewish leaders "don't want to see a green light to racial vilification".
"I believe that you can amend 18C without hurting our ability to punish those who racially vilify other people," said Mr Frydenberg, who is parliamentary secretary to Tony Abbott. **"It's about getting that balance right. We do not want Holocaust deniers in this country."**
Other Liberal MPs, including indigenous Perth MP Ken Wyatt and western Sydney MP Craig Laundy, have voiced deeper concerns about the reform proposal.
Executive Council of Australian Jewry executive director Peter Wertheim has defended the existing law as an appropriate defence to "human dignity".
"Until we see the government's draft legislation, it's too early to say whether we are at odds with the government or not," Mr Wertheim said of Mr Frydenberg's comments.
"Once people understand that the existing law only applies to serious cases and requires an objective test to be satisfied based on community standards, rather than a subjective test based on hurt feelings, it becomes clear that the current law is about enabling targeted groups to defend themselves against racial vilification and has nothing to do with limiting free speech.
"The law does not stop anybody from offending or insulting others because of their opinions or beliefs. People can change their opinions or beliefs.
"But the current law does prohibit publicly offending and insulting others because of their race, which is something people cannot change."
http://www.theaustralian.com.au/national-affairs/policy/mp-risksconflictoverracereforms/storyfn9hm1pm1226862673510#

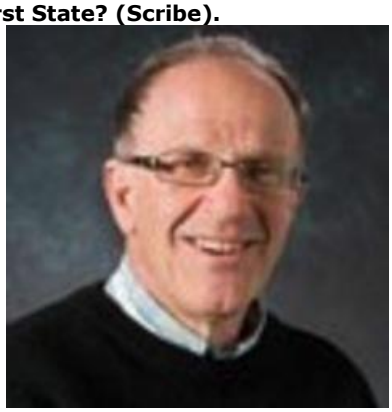
Bolt, Brandis and the double standard on free speech

Dennis Altman, Professorial Fellow in Human Security at La Trobe University

21 March 2014, 6.38am AEST

Dennis Altman is a writer and academic who first came to attention with the publication of his book *Homosexual: Oppression & Liberation* in 1972.
This book, which has often been compared to Greer's Female Eunuch and Singer's Animal Liberation was the first serious analysis to emerge from the gay liberation movement, and was published in seven countries, with a readership which continues today.
Since then Altman has written eleven books, exploring sexuality, politics and their inter-relationship in Australia, the United States and now globally. These include The Homosexualization of America; AIDS and

the New Puritanism; Rehearsals for Change, a novel (The Comfort of Men) and memoirs (Defying Gravity). His book, Global Sex (Chicago U.P, 2001), has been translated into five languages, including Spanish, Turkish and Korean. In July 2013 UQP will publish his latest book, The End of the Homosexual?
Most recently he published Gore Vidal's America (Polity) and Fifty First State? (Scribe).



Altman was Professor of Politics and Director of the Institute for Human Security at LaTrobe University in Melbourne, and is now a Professorial Fellow at La Trobe. He was President of the AIDS Society of Asia and the Pacific (2001-5), and a member of the Governing Council of the International AIDS Society [2004-12].
In 2005 he was Visiting Professor of Australian Studies at Harvard, and was a Board member of Oxfam Australia. In 2007 he was made a member of the Order of Australia.

An ideal marketplace of ideas would allow for stupidity and prejudice to be exposed without the need for the race hate laws which were used to prosecute Andrew Bolt. AAP/Julian Smith

It was the ultimate irony. On this week's **Q&A**, host Tony Jones**issued an apology** on behalf of both Indigenous academic Marcia Langton and the ABC for Langton implying on the previous week's program that News Corp columnist Andrew Bolt was a racist.

This is despite Bolt's **very personal attacks** on fair-skinned Aborigines, which led to his **successful prosecution** under**Section 18C** of the **Racial Discrimination Act** in 2011. This is a section that his friends in government, including **prime minister Tony Abbott**, have pledged to repeal.

It is possible that Bolt would have recourse to the laws of defamation even without the existence of the Racial Discrimination Act. But his actions in demanding an apology did make rather hollow the constant refrain from the right that they believe in untrammelled free speech and the importance of countering such attacks through discussion rather than the courts.

There is **considerable debate** about the plans to repeal or amend Section 18C, all of which have revolved around arguments about whether or not it is reasonable to deny freedom to "hate speech". As Race Discrimination Commissioner Tim Soutphommasane has **pointed out**:

The words of the act say that something is unlawful if it is "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate" another person or group of persons on the grounds of race.

Even one of Abbott's own backbenchers, Indigenous MP Ken Wyatt, **has argued** that the law protects indigenous and other minority groups against hatred that can easily escalate beyond mere words. Wyatt has **reportedly threatened** to cross the floor to vote against the proposed changes, which have not yet been released.

The rhetoric of attorney-general **George Brandis** and newly appointed Human Rights Commissioner **Tim Wilson** suggests that freedom of speech is paramount. They argue that it is the foundation of a democratic system. This is an appealing argument, but the inconsistencies and the gaps in their argument are striking.

The people who are so adamant about the right to say things that are deeply hurtful to those groups most vulnerable to abuse and attack in our community are often the same people who support increasing censorship of materials seen as "pornographic".

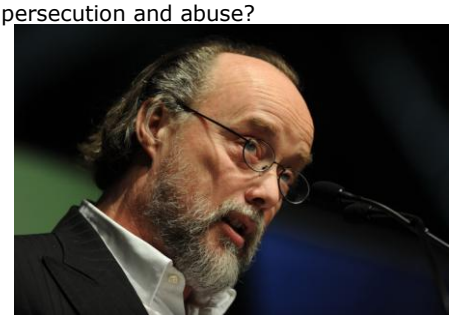
When Bill Henson's photographs of naked children **were seized**as "pornographic" in 2008, Brandis, then-shadow attorney-general, **supported the police**. Without any apparent concern whether the law restricted freedom of expression, Brandis argued that artists must act within the boundaries of the law:

No artist has a carte blanche to say, 'Because I'm an artist, I'm entitled to breach the criminal law in relation to matters like child pornography.'

In his attack on Henson, Brandis was in agreement with **then-prime minister Kevin Rudd** (who described the photographs as "revolting"), but not his own colleague **Malcolm Turnbull**, who defended Henson and artistic freedom.

Bolt had a field day. He wrote a **number of articles** attacking Henson without any interest in the view of people somewhat more versed in the arts who, in general, **dismissed the charges** as ridiculous.

But if there is any truth to a claim that images of naked children might encourage paedophilia, why dismiss claims that attacks on racial, ethnic or sexual minorities might lead to increased persecution and abuse?



Photographer Bill Henson was condemned by supposed free speech advocates Andrew Bolt and George Brandis over a series of artworks depicting naked children. AAP/Julian Smith

In an ideal world there would be no need for laws against hate speech. The ideal marketplace of ideas would allow for stupidity and prejudice to be exposed. But such an ideal world would also be one in which there would be equal access to media, so all positions could be heard.

In the world we live hate speech has consequences. We need laws to help prevent the fostering of hatred which leads to actual persecution.

After his apology on Monday night, Tony Jones assured us that Bolt would be invited to put his case on Q&A. If accepted, Bolt, who already has extraordinary access to the media through both a regular column in the Herald Sun and **his own television show**, would have yet another chance to speak to a television public.

Of course, no matter how hard the ABC tries to provide airtime to the right – and Brandis is a Q&A regular – it will be attacked as biased to the left.

But nor is the left immune to selective exposure. It is enlightening to go through the 54 issues of the **Quarterly Essay** and see how narrowly both topics and appropriate writers are defined.

The point here is that freedom of speech does not equate to equal opportunity to be heard, and that inevitably the defence of such freedom rarely examines access. A common trope of the right today is that media oligarchies, in particular News Corporation's dominance of print media, don't matter because we live in a world of blogs and internet sites.

Yes, we are all free to express our views. But as French writer Anatole France **pointed out**, the rich and poor are equally forbidden to sleep under bridges. I would be more impressed by those like Brandis and Bolt who argue against any

restrictions on free speech if they also showed some interest in how those who are most often the victims of abusive language might enjoy some access to major media outlets.

If they really believe in a free marketplace of ideas they need to think how to make it accessible to everyone.
http://theconversation.com/bolt-brandis-and-the-double-standard-on-free-speech-24423

Another miraculous escape from the Auschwitz gas chamber - when will the matter be tested for factual truth-content? Don't ask such questions because Mr Binet may become upset and take you to the Federal Court

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'The number is with me everywhere I go'

Auschwitz survivor responds to news of discovery of death camp tattoo equipment with mixed emotions: "The number was a constant reminder that the Germans wanted to destroy me, but the family that I created is my revenge."

Omri Efraim, Published: 03.16.14, 0051

"I don't need to hear that they found something at Auschwitz in order to remember. The number on my hand and the terrible memories from there haunt me every day since," said the 76-year-old Auschwitz-Birkenau survivor Abraham Binet, responding to the article in the British Daily Telegraph regarding the discovery of Auschwitz tattoo equipment in Poland.

SS soldiers used the small metal stamps with embedded needles to tattoo inmates as they were processed on their arrival at the camp in German-occupied Poland, the paper said.

According to the report, Auschwitz museum director Piotr Cywinski said the discovery was "one of the most important finds in years."

Metal stamp with embedded needles that were found in Poland (Photo: EPA)

Abraham Binet, who was six years of age when he was sent to the death camp with his mother and two brothers, remembers well the day that the number 140005 was tattooed on his forearm.

"As soon as we got to the camp, we moved through a selection process," he said. "My mother was sent to the right, to the labor section, and my twin brother, little sister and myself were sent to the left to the 'showers', essentially to the gas chambers and crematoria."

The three children survived miraculously when a German officer pulled them out of the line and handed them over to German SS officer and physician Dr. Josef Mengele, where they were used for human "experimentation".

"We were saved, just minutes before our certain death," Binet, who was born in Czechoslovakia and deported to Auschwitz in 1944, recalled. "After I was taken away from the queue, it was time to receive the tattoo. There weren't only stamps, it was done with pins and the ink was injected into my skin. It was a very painful procedure, our hands were tied to the table and SS soldiers stood nearby with a machine gun. Since then, the number is with me everywhere I go."

Abraham Binet (Photo: Motti Kimchi)

The three children, who were separated from their mother, managed to survive the impossible conditions of the death camp. "It was hell and we conquered it", Binet said. The survivor immigrated to Israel in 1950, where he established a large family: Five children, nineteen grandchildren and nine great grandchildren. "The number was a constant reminder that the Germans wanted to destroy me and my family. I can't do anything to them, but the family that I created is my revenge."

Colette Avital, Chairwoman of the Center of Organizations of Holocaust Survivors in Israel, addressed the new findings: "The discovery of the tattoo equipment from Auschwitz evokes painful memories for the survivors about a stamp that was sunk into their flesh and the number that they carry on their arms till this day."

"However," Avital added, "the discovery is of great importance due to the vast number of holocaust deniers around the world. Any proof of this kind puts them in front of a reality that is difficult to ignore, and helps commemorate and gain recognition for the horrors that occurred.

http://www.ynetnews.com/articles/0,7340,L-4499060,00.html

Mark Dreyfus calls on George Brandis to spell out plans on discrimination laws

ROSIE LEWIS, THE AUSTRALIAN, MARCH 16, 2014 11:21AM

SENIOR Labor MP Mark Dreyfus has demanded the Abbott government come clean over what changes it will make to a controversial section of the race discrimination laws.

The shadow Attorney-General said on today's Australian Agenda program that section 18C of the Racial Discrimination Act had served Australia well for nearly 20 years and needed to be left alone.

His comments come after the Institute of Public Affairs this week accused the government of retreating from its election pledge to repeal the section, which prohibits remarks that are

reasonably likely to offend, insult, humiliate or intimidate on the grounds of race or ethnicity.
"Senator (George) Brandis from opposition said he was going to repeal section 18C, Tony Abbott from opposition said he's going to repeal 18C. Since they've got to government six months on they've been all over the place, not clear on what's going to happen," Mr Dreyfus said.
"Time's up and the government should say what it's going to do."
Mr Dreyfus said he welcomed apparent back tracking by the Attorney-General and prime minister over their promise to repeal the section, which was used to prosecute columnist Andrew Bolt.
"Hundreds of community groups across Australia have complained to Tony Abbott, have complained to George Brandis and have complained to their local members."
"I'm very pleased there's been some back pedalling, so there should be," he said.
Writing in The Australian on Friday, University of Queensland law professor James Allan suggested the Coalition's claim that the section would be repealed "in its present form" indicated it could actually be expanded
But Senator Brandis said such commentary was "inaccurate".
"What Mr Abbott and I have said since the election is precisely word-for-word what we said before the election, which is that we would repeal section 18C in its current form; that we would remove from the Racial Discrimination Act the anti-free-speech provisions which enabled for example the journalist Andrew Bolt to be taken to court merely because he expressed an opinion about a matter of public policy which is offensive to some," he said.
Mr Dreyfus told Australian Agenda he found it offensive the section might be repealed because of the impact it had on Mr Bolt.
"The idea that just because one right wing commentator should have been found to have contravened the provision, that we should chuck out something that's served Australia very well over nearly 20 years, I find very offensive," he said.
Mr Dreyfus applauded opposition to the repeal by Liberal MPs Craig Laundy and Ken Wyatt, who represent multicultural electorates.
Additional reporting: Jared Owens
http://www.theaustralian.com.au/national-affairs/mark-dreyfus-calls-on-george-brandis-to-spell-out-plans-on-discrimination-laws/story-fn59niix-1226856112464

The recovery of liberty

CHRISTIAN KERR, THE AUSTRALIAN, MARCH 20, 2014 12:00AM

GEORGE BRANDIS: 'By making the reasonable likelihood of causing offence or insult the test of unacceptable behaviour, in any political context, section 18C is a grotesque limitation on ordinary political discourse.' *Source:* News Corp Australia

MARK DREYFUS: 'In the Racial Discrimination Act we've got explicitly set out a protection of free speech, a protection of political speech, a protection of artistic endeavours, and that's of course where Andrew Bolt failed ... because he couldn't prove that he'd acted reasonably' *Source:* News Limited

POLITICIANS love leaving memorials to themselves, but Attorney-General George Brandis is more ambitious than most. He wants more than a few brass plaques. He wants to be remembered for cultural change.

Brandis no doubt knows the 1980 collection of essays, *The Recovery of Freedom*, by British historian Paul Johnson that explained his conversion from socialism to laissez faire and put the case for free-market liberalism — and influenced the likes of Ronald Reagan.
The attorney is executing his own work: the recovery of liberty.
He has already made a first move, appointing the Institute of Public Affairs' Tim Wilson as Human Rights Commissioner. Now he is dealing with sections of the Racial Discrimination Act the government believes are too broad.
These two sections, 18C and D, secured the 2011 finding against columnist and broadcaster Andrew Bolt over two articles he wrote on light-skinned Aborigines he alleged were exploiting their less than obvious ethnicity for personal gain.
Section 18C criminalises acts "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people". Section 18D explains: "Section 18C does not render unlawful anything said or done reasonably and in good faith."
These provisions allowed Pauline Hanson to claim in her book *The Truth* that Aborigines were unfairly favoured by government.
But in the Bolt case judge Mordecai Bromberg found in part against the columnist as the tenor of his column had breached the good faith provisions.
The Racial Discrimination Act is a creation of the Keating government. It survived untouched through the Howard years.
Yet, in a speech to the IPA in August 2012, Tony Abbott pledged to repeal section 18C "in its current form" if elected prime minister.
He specifically cited the Bolt case in justifying his position.
"The article for which Andrew Bolt was prosecuted under this legislation was almost certainly not his finest," he said. "There may have been some factual errors. Still, if free speech is to mean anything, it's others' right to say what you don't like, not just what you do. It's the freedom to write badly and rudely. It's the freedom to be obnoxious and objectionable.
"Free speech is not bland speech," Abbott continued. "Often, it's pretty rough speech because people are entitled to be passionate when they are arguing for what they believe to be important and necessary. Speech that has to be inoffensive would be unerringly politically correct but it would not be free."
The commitment still stands and was restated as recently as Tuesday, when the Prime Minister told the Coalition partyroom he would not back away, despite the misgivings of some in his

ranks and a concerted campaign from representatives of the indigenous, Greek, Jewish, Chinese, Arab, Armenian and Korean communities.
The government has not denied reports in *The Australian* that changes are also being mooted to 18D.
Yesterday opposition legal affairs spokesman Mark Dreyfus said the Prime Minister should stand up to "ideological extremists within his party and abandon its (sic) intention to rip away protections for Australians from racially motivated hate speech.
"These changes fly in the face of sustained criticism from ethnic and community groups, who understand better than anyone the protection section 18C provides," Dreyfus continued.
"By repealing this provision the government is sending a message that they are prepared to give a green light to hate speech. The government should leave section 18C exactly as it is. It has served our community well for almost 20 years."
Hugh de Kretser from the Human Rights Law Centre agrees. "The legislation was brought in at the request of community groups to address the serious harm that flows from racial vilification," he tells *The Australian*. "It responded to our international obligations to prevent the promotion and incitement of racial discrimination, hostility and violence."
De Kretser says the legislation has operated "reasonably effectively" for close to two decades.
"Only a small number of cases have been brought in the courts but many more complaints have been successfully resolved by the Australian Human Rights Commission," he says. "The courts have sensibly applied the legislation and have been clear it only covers serious cases."
He adds that the free speech safeguards built into the legislation have worked, citing the Hanson example, and offers his perspective of the Bolt matter.
"The judge in the Bolt case was clear that the law doesn't prevent public discussion challenging the genuineness of racial identity. If Bolt had acted reasonably and in good faith in writing the articles, we might not be in this situation," he says. "The judge found that Bolt's articles contained multiple mistakes and distortions of the truth."
De Kretser says the views of ethnic groups in the debate deserve particular attention.
The Jewish community has been at the forefront of opposition to changes to the act.
Peter Wertheim, head of the Executive Council of Australian Jewry, points out laws against racial vilification operate in Britain, Canada, New Zealand and many of the countries of Europe.
"The harms of racial vilification are far more profound than merely causing hurt feelings or offended sensibilities," he says. "Section 18C does not stop anyone from offending, insulting or humiliating others because of their conduct or ideas. But it does prohibit one person from publicly engaging in serious denigration of individuals or groups because of the colour of their skin or their ethnic origin. These are factors that one cannot change. The protections provided by section 18C are similar to those that exist under defamation laws, but the protections extend to groups and not merely individuals."
Wertheim says the laws were introduced after three national inquiries found that there was a nexus between racial vilification and racially motivated violence and echoes de Kretser's comments on their operation.
"There is no topic, and no side of the argument on any topic, which is placed beyond limits for public discussion by sections 18C and 18D," he says.
"These sections deal only with the manner in which public discussion takes place. Any opinions may be expressed on any topic as long as racial vilification is not employed."
Wertheim says there has been a cross-party consensus in Australia that racism should not be used as a tool of persuasion in public debate.
"During the 11 years of the last Coalition government under John Howard no attempt was made, and no proposals were put forward, to repeal, amend or even review sections 18C and 18D," he says. "There was no public controversy about these sections. Those who now seek to change the law admit that they are being driven by the court judgment against Andrew Bolt … But it's not the right thing for Australia."
The government views that claim differently.
"If it's all right for David Marr, for instance, to upset conservative Christians, in his attempt to have them see the error of their ways, why is it not all right for Andrew Bolt to upset activist Aboriginals to the same end?" Abbott asked in his IPA speech. "Freedom of speech can't be absolute." But he went on to call it "an essential foundation of democracy".
"Without free speech, free debate is impossible and, without free debate, the democratic process cannot work properly, nor can misgovernment and corruption be fully exposed," he said.
"Freedom of speech is part of the compact between citizen and society on which democratic government rests.
"A threat to citizens' freedom of speech is more than an error of political judgment," Abbott continued. "It reveals a fundamental misunderstanding of the give and take between government and citizen on which a peaceful and harmonious society is based."
Two months before the Bolt judgment was handed down, then prime minister Julia Gillard had used the *News of the World* scandal to declare, without any evidence, that News Corporation in Australia had "hard questions" to answer. A fortnight before the ruling the Finkelstein inquiry into the media was established. The following year then attorney-general Nicola Roxon released the exposure draft of her Human Rights and Anti-Discrimination Bill, which not only created a new offence of "offending" others but reversed the onus of proof so respondents had to prove their innocence.
Former NSW chief justice Jim Spigelman denounced the bill, saying it would impose unprecedented restrictions on free speech, far beyond anti-discrimination laws in other countries.
Roxon was forced into an embarrassing backdown in January last year, yet that March communications minister Stephen Conroy blithely introduced his new media regulatory regime, only to be forced to withdraw it a week later when it became clear the crossbenchers keeping Labor in power would not back it.
All these have shaped the government's approach to the Racial Discrimination Act. Brandis's recovery of liberty is an effort to defend pluralism against political correctness — or the straight out political threats of Gillard and Conroy.
"Repealing section 18C will not leave victims of racial intimidation without legal protection," Simon Breheny, director of the IPA's legal rights project, said yesterday. "It is against the law to intimidate another person under a wide range of existing commonwealth and state laws. These laws provide a high degree of legal protection without restricting freedom of speech."
Brandis told the Senate yesterday: "It is the view of the government that we can have strong protections of freedom of speech and appropriate laws to protect people from racial vilification and that the two are not inconsistent objectives.
"These are not inconsistent objectives; to have the best laws protecting Australians from racial vilification and have laws at the same time which do not impinge upon the right of citizens to hold and express opinions without being told what to say or to think by government."
Brandis flagged legislation would be introduced "before the middle of the year". He admitted the issue was vexed but added "censorship is not the answer". He continued: "Reasonable people can disagree in good faith but still be reasonable people."
Brandis has neither confirmed nor denied that the government is considering the possible amendments of 18C and D as reported by *The Australian* this week, yet all indications are he believes reasonableness will prevail, a form of words can be found and his liberty agenda will be advanced — along with his ambitions to one day be Senate leader.
http://www.theaustralian.com.au/news/features/the-recovery-of-liberty/story-e6frg6z6-1226859539474#

MP risks conflict over race reforms

JARED OWENS, THE AUSTRALIAN, MARCH 24, 2014 12:00AM

THE Coalition's only Jewish MP, Josh Frydenberg, has risked a conflict with Jewish leaders by backing his government's reforms to the Racial Discrimination Act.

The government has promised to overhaul section 18C of the act, which prohibits remarks reasonably likely to offend, insult, humiliate or intimidate on the grounds of race or ethnicity.

It aims to remove the provision that resulted in a 2012 court finding against newspaper columnist Andrew Bolt for an article criticising prominent fair-skinned indigenous Australians.

Attorney-General George Brandis is preparing the legislation, although The Australian has been told the bill will not be introduced to parliament before the budget in May.

Interviewed by Bolt on the Ten Network yesterday, Mr Frydenberg acknowledged Jewish leaders "don't want to see a green light to racial vilification".

"I believe that you can amend 18C without hurting our ability to punish those who racially vilify other people," said Mr Frydenberg, who is parliamentary secretary to Tony Abbott. "It's about getting that balance right. **We do not want Holocaust deniers in this country."**

[What country is he talking about – Israel? – ed. AI]

Other Liberal MPs, including indigenous Perth MP Ken Wyatt and western Sydney MP Craig Laundy, have voiced deeper concerns about the reform proposal.

Executive Council of Australian Jewry executive director Peter Wertheim has defended the existing law as an appropriate defence to "human dignity".

"Until we see the government's draft legislation, it's too early to say whether we are at odds with the government or not," Mr Wertheim said of Mr Frydenberg's comments.

"Once people understand that the existing law only applies to serious cases and requires an objective test to be satisfied based on community standards, rather than a subjective test based on hurt feelings, it becomes clear that the current law is about enabling targeted groups to defend themselves against racial vilification and has nothing to do with limiting free speech.

"The law does not stop anybody from offending or insulting others because of their opinions or beliefs. People can change their opinions or beliefs.

"But the current law does prohibit publicly offending and insulting others because of their race, which is something people cannot change."

http://www.theaustralian.com.au/nationalaffairs/policy/mpriskconflictoverracereforms/storyfn9hm1pm1226862673510#

LAWYER:

Here's How Australia's New Racial Discrimination Laws Would Apply To Social Media

BEN COLLINS 25 March 2014 4:26 PM

Australia has announced proposed changes to racial discrimination laws (Photo: Getty/Stefan Postles)

Australians may soon have carte blanche to offend, humiliate and insult whoever they please, as long as they are participating in a socially-relevant discussion.

Prime Minister Tony Abbott used an analogy involving traffic lights to explain the proposed changes to racial discrimination laws, saying his government wanted to remove the "amber" light on free speech, yet keep the "red light" on for bigotry.

The amendments, outlined by the Attorney-General George Brandis this morning, include a very broad clause (section four) which is certainly far more liberal in the allowances it makes for public discourse in Australia.

It would be illegal to vilify or intimidate on the grounds of race, colour, nationality or ethnic origin. However, the section does not apply to statements "published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic, or scientific matter".

"It's clearly intended to be broad," says Ashurst partner Robert Todd, one of Australia's most highly-regarded media lawyers. "The government intends to enable greater free speech by making it broad."

Breadth can lead to confusion though, especially when options for communicating in Australia span the gamut from shouting at a street protest, to venting on social media. So we've asked Todd to explain a few aspects of the potential changes which could cause some confusion.

Social Media

"Yes, it would apply to social media," Todd says. While this means users would be given greater leave to express their opinions on racial minorities, they would need to be canvassing or contributing to a relevant, public discussion for the clause to apply.

"A public discussion is not limited. It would be any discussion of a public nature, of any format. But it would still have to be a public discussion."

This means someone making offensive, bigoted statements in public using a social media channel could still face prosecution if their opinions are clearly unrelated to a current debate.

"If someone just chipped in with an unrelated statement they could still be caught … **Someone metaphorically leaning over the fence and shouting something that was intended or reasonably likely to vilify and intimidate would still be caught**," Todd explains.

"But if there has been some debate or discussion on a social media site on a particular topic, then the exemption would apply."

Protests

Protesters could also be covered by section four of the draft changes, Todd says, but again it would need to be related to a topic the general public considered relevant.

"If you are doing something as part of a public discussion, and that is part of a protest then yes, the exemption might apply," he says.

"But if someone makes a statement that is not related, then it might not.

"A protest is usually about something that is a matter of political of social interest. It's a political discussion."

Reasonable Community Expectations

Whether an act vilifies of intimidates would be decided by the standards of an "ordinary reasonable member of the Australian community", rather than the standards of any particular group.

This would mean people belonging to a racial minority living in Australia would not be able to claim they had been vilified or intimidated by any act that a reasonable person didn't find offensive, or wrong.

"It adopts the language used in defamation matters, which is just a legal construct," Todd says.

"That is intended to mean you don't judge it by whether or not a particular person, or a particular group thinks it is likely to have that affect.
"That standard will change from time to time. Ordinarily, reasonable community standards do change. It's always going to be difficult to interpret, and it will be interesting to see how judges interpret it."
http://www.businessinsider.com.au/lawyer-heres-how-australias-new-racial-discrimination-laws-would-apply-to-social-media-2014-3

Holocaust denial:
Tony Abbott, George Brandis unable to say how race-hate law changes would work

Lisa Cox, ***National political reporter,***
March 26, 2014 - 11:25AM

Prime Minister Tony Abbott defends proposed changes to race-hate laws. *Photo: Andrew Meares*

The Abbott government has been unable to answer questions about how its changes to race hate laws will work, including whether the laws will apply to Holocaust deniers.
Prime Minister Tony Abbott and Attorney-General George Brandis could not say whether a case involving Holocaust denier Gerald Toben, who was forced by a judge to remove material from his website in 2002, would reach the same conclusion under the new laws.
Under the changes, it would no longer be an offence to ''offend, insult or humiliate'' someone because of their race or ethnicity. A provision against ''intimidating'' someone would remain and a clause against vilification has been added.
Labor's shadow attorney-general Mark Dreyfus has said the laws water down protections against racist speech and create exemptions for free speech that are so broad you can "drive a truck" through them.
Mr Abbott told Fairfax Radio on Wednesday that statements denying the Holocaust were "ridiculous, it's hurtful and it's wrong" but was unclear as to whether such comments would be illegal under the revised Racial Discrimination Act.
''Well in the end that would be for a court to determine,'' he said. ''And the fundamental point that I make is that the best antidote to folly is commonsense and the best way to refute a bad argument is with a good argument.''
Mr Abbott said that he was not a judge and decisions on what was appropriate would be left to legal authorities.
''What we're saying is that it is an offence to vilify an individual or group based on race and we have defined vilification as incitement to racial hatred,'' he said.
Senator Brandis told Radio National that racial vilification, which has been inserted into the Act under the proposed changes, ''would always capture the concept of Holocaust denial''.
But the Attorney-General could not guarantee Holocaust deniers who published their views would be forced to delete anti-Semitic material.
''I can't guarantee something because I don't know, we're talking about a hypothetical case that you're putting to me,'' he said.

Tony Abbott's indigenous adviser Warren Mundine is opposed to the changes to the race hate laws. *Photo: Danielle Smith*

''Toben as I understand his case wasn't involved in the public discussion of a matter he just put some nonsense on his website.''
Labor continued its attacks on the revised laws, after criticising on Tuesday the broadening of exemptions for freedom of speech. It will launch a blitz on Liberal-held marginal seats to warn migrant communities about the Abbott government's plans to water down race hate protections.
''It is a sad thing that one of the first priorities of this new government is to make it easier to racially abuse people,'' Deputy Opposition Leader Tanya Plibersek told Radio National on Wednesday.
''I am a great supporter of free speech, that's why I'm a great supporter of the ABC.
''And I noticed that this government whenever the ABC says something that the government doesn't like they're very quick to hop in and say it's not that the ABC should have the same right to free speech that they say they're defending with these legal changes.''
The elected representative body for Aboriginal and Torres Strait Islander peoples also issued a strongly worded statement condemning the government's proposed changes.
"We are horrified to consider the kind of Australia that could grow out of what is now being proposed," said Kirstie Parker, co-chair of the National Congress of Australia's First Peoples.
"We know intimately the impact that racist abuse has on our peoples. It... literally makes us sick."
Ms Parker said it was ''beyond comprehension'' that the Abbott government would ''openly champion a single commentator, Andrew Bolt'' in watering down the race hate laws.

There was little opposition to the reforms in the Coalition party room on Tuesday, although La Trobe MP Jason Wood, a former policeman, raised concerns that the broadness of the new definitions would make it virtually impossible to get a prosecution.
A number of Liberal MPs whose electorates have a high proportion of ethnic and overseas-born residents are known to be nervous about the potential backlash.
Indigenous Liberal MP Ken Wyatt, who last week threatened to cross the floor to oppose the change, said on Tuesday that he would consult with his community about the proposed changes.
Mr Abbott is facing opposition from the head of his indigenous advisory council Warren Mundine, who is urging Mr Abbott to drop the controversial plans, but he said he wouldn't walk away from the council in protest.
Mr Mundine, an indigenous leader and former national Labor president, said he copped racial abuse nearly every day.
''When you let people off the chain in regard to bigotry then you start having problems,'' he told ABC radio on Wednesday.
Mr Mundine said society made it quite clear that racism and bigotry were unacceptable. ''We have had conversations about it and our advice to the prime minister was that they should not be going down this track.''
Labelling the proposed changes the ''Andrew Bolt clause'', Greens leader Christine Milne said it would create a legal loophole to use offensive or inciteful language.
Independent senator Nick Xenophon said he would be talking to community groups to gauge their reaction, but Mr Mundine's opposition was worth noting.
''In a democratic country as ours you have a right to be a jerk and an idiot,'' he told reporters.
''But . . . anything that incites hatred, that could potentially incite people to violence, is something that we must as a society do everything we can to prevent.''
Scottish-born Labor senator Doug Cameron, who left his home country to escape bigotry, says Senator Brandis and the Coalition should have a good look at themselves.
''They obviously don't understand what bigotry does to individuals, what bigotry does to communities.''
with Jonathan Swan
http://www.smh.com.au/federalpolitics/politicalnews/holocaust-denial-tony-abbott-george-brandis-unable-to-say-how-racehatelawchangeswouldwork2014032635hkt.html#ixzz2x2kGm29G

Backlash over George Brandis' racial discrimination repeal

Bigotry or free speech?

Question time on Tuesday is dominated by proposed changes to the Racial Discrimination Act

James Massola, Jonathan Swan

Making a point: Attorney-General George Brandis in Canberra on Tuesday. *Photo: Andrew Meares*

Prime Minister Tony Abbott is facing a storm of protest from religious and ethnic groups, human rights organisations and sections of his own backbench over sweeping changes to race-hate laws which have pleased right-wing commentator Andrew Bolt.
Under changes proposed by Attorney-General George Brandis, section 18C of the Racial Discrimination Act, which makes it unlawful for someone to act in a manner likely to ''offend, insult, humiliate or intimidate'' someone because of their race or ethnicity, would be repealed.
Section 18D, which provides protections for freedom of speech, will also be removed and replaced by a section that removes the words ''offend, insult and humiliate'', leaves ''intimidate'' and adds the word ''vilify'' for the first time. Sections 18B and 18E would also be repealed. They include provisions that can make employers liable for race-hate speech.
On Tuesday, Mr Abbott argued the changes were designed to give the ''red light'' to bigotry and strengthen free-speech protections, but several Liberal MPs, human rights lawyers and ethnic groups were concerned about an extraordinarily broad exemption contained in the exposure draft regarding public discussion.
''What the government is attempting to do, as carefully, as collegially and as consultatively as we can, is to get the balance right,'' Mr Abbott told Parliament. ''This is draft legislation which has gone out for consultation with the community.''
Liberal MPs Sarah Henderson and Jason Wood added their voices to growing concern among Coalition MPs during the government's party room meeting.
Liberal MPs David Coleman and Craig Laundy, who represent electorates with a high proportion of multicultural constituents have previously flagged concerns, as has indigenous MP Ken Wyatt, who warned he could cross the floor over the issue. Mr Wyatt has since softened his position.
One Coalition MP said Senator Brandis' proposed changes were sensible, but admitted MPs were aware political opinion was turning against the Coalition with another 30 days of public consultation ahead.
''This is turning into a mess, Labor now has six weeks to throw bombs and marginal seat holders are getting nervous,'' the MP said.
Labor, the Greens and ethnic groups all criticised Senator Brandis' ''public discussion'' exemption, while the Australian Human Rights Commission president Gillian Triggs argued the exemption was ''so broad it is difficult to see any circumstances in public that these protections would apply''.
The commission will make a detailed submission and questioned why the ''intimidation'' provision would be limited to physical intimidation and would not cover psychological or emotional damage.
Labor's legal affairs spokesman Mark Dreyfus accused the government of giving a ''green light to bigotry'' and asked Mr Abbott to name a single community group that supported the changes. Mr Abbott was unable to name a group.
The changes would not pass through the current Senate and will struggle to get through the new Senate, which forms on July 1. Palmer United Party leader Clive Palmer said his party, which will share the balance of power, had yet to decide its view.
Australia/Israel and Jewish Affairs Council executive director Colin Rubenstein, lashed the changes for removing ''any protection against public insults and humiliation on the grounds of race''.
''To pass the amendments as they stand would risk emboldening racists,'' he said.

News Corp columnist Bolt, whose 2011 legal case prompted the changes, said he thought the Abbott government had done the right thing. The proposals, he said, should ''permit us to ban what is truly wicked while leaving us free to punish the rest with the safest sanction of all - our free speech''.

http://www.smh.com.au/federal-politics/political-news/backlashovergeorgebrandisracialdiscriminationrepeal2014032535gih.html#ixzz2x2mo6EyL

Comment

Brandis, bigotry and balancing free speech

Andrew Lynch, March 26, 2014

The Coalition has dug itself into a deep hole before its proposed changes to the Racial Discrimination Act are even considered.

Illustration: John Spooner.

It is perhaps not surprising that a day after declaring that "people do have a right to be bigots", Commonwealth Attorney-General George Brandis has released his intended changes to provisions of the Racial Discrimination Act.

Brandis desperately needs to offset the bluntness of his response to Senator Nova Peris' question about the effect that repeal of section 18C of the act would have on the experiences of ethnic groups in this country. The section makes it unlawful for a person to "offend, insult, humiliate or intimidate" others because of their race. As a way of articulating the government's mission on 18C, for which the catalyst was the successful case brought against columnist Andrew Bolt, the Attorney-General's candour was refreshing.

But in taking that toxic word from the question put to him by Peris and proclaiming his government's view that people have the right to be ''bigots'', Brandis would have set alarm bells ringing, not just for indigenous Australians, but throughout our multicultural community.

The draft amendments to the act that Brandis released on Tuesday are surely aimed at recapturing the middle ground in this debate - which the Attorney-General decidedly lost in the Senate chamber on Monday.

Brandis' defence of free speech to the extent of bigotry was deeply problematic - both in the specific context of the purpose of 18C and the bigger picture of the government's position on race and free speech generally.

Let's start with the government's broader agenda. The Abbott government is committed to putting up a proposal in this term for the recognition of indigenous Australians in the constitution. The Prime Minister has signalled that this is a project to which he has a strong personal commitment.

It is unclear just how the huge task of a referendum is assisted by Brandis, who will be at the centre of the case for constitutional change to acknowledge our first peoples. He will effectively be telling Peris, one of the few indigenous Australians ever to sit in the national Parliament, that his government is standing up for the right of bigots.

Successful referendums depend on trust in the government putting the proposal. But Australia's indigenous communities would be forgiven for doubting the government's commitment to constitutional change as a meaningful act of reconciliation when Brandis appears so dismissive about the role of law to prohibit divisive racist speech.

Likewise, the government appears conflicted over the importance it places on free speech generally. Brandis has repeatedly justified his plans to remove the protections of the Racial Discrimination Act by insisting that "our freedom and our democracy fundamentally depend upon the right to free speech". But how is the community to square the forcefulness with which he makes this claim with the substantial restrictions the government has placed on efforts by the media and public to access information about asylum seeker arrivals and conditions on Manus Island?

On section 18C, it is very clear that the government is making a choice as to whose rights it gives priority. Brandis presents his case as one of inviolable principle, yet we need only reflect on the circumstances of the notorious Bolt case to appreciate why free speech might justifiably be ceded to other interests. The reality is that some voices are louder than others in our democracy. Andrew Bolt communicates his views through a range of media platforms. The people about whom he made remarks and who brought their action under 18C have no equivalent capacity to respond. Indeed, until the outcome of their case, had the community heard the other side to what Bolt had written?

The Attorney-General's defence of the rights of bigots presumes that those who are targeted by their comments are just as capable of marshalling the media to defeat that bigotry. This imagined level playing field underpinned his full response to Peris. But that is obviously not always, or even often, going to be the case.

Law is an instrument through which a community's values and rights may be given effect. In Monday's debate, Brandis came down firmly on the side of those who would give voice to racially motivated insult and offence, over those who are targeted by such comments. In so doing, the Attorney-General presented his government as having a character that we might suspect caused some real discomfort in its ranks - and also, at the top.

The government may be hoping that the swiftly released proposals for amending the act will ameliorate this. Section 18C is to go but its protection of groups from intimidation is preserved. Additionally, a new offence of racial vilification, meaning the ''incitement of hatred against a person or a group of persons'' is to be created.

For a government that promised there would be ''no surprises,'' this is a big one. The Coalition ran on scrapping 18C - something its supporters, including the Institute of Public Affairs, are determined to hold it to. It did not campaign on being the government which, as Brandis trumpeted on Tuesday, would provide for "the first time that racial vilification is proscribed in Commonwealth legislation".

But this development needs to be understood alongside the vast exemption to be given to communication made "in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter".

The government wants to hear from ''all stakeholders'' on its proposed changes. It will be fascinating to see who, if anyone, is happy with them.

In opposition, it probably seemed harmless venting a bit of outrage over the Bolt case. But as debate over 18C continues

to show, tangling with issues of race is a complicated and treacherous business. The government has dug its own hole and now it is busy trying to shovel a way out - hoping it isn't just digging itself deeper.

Professor Andrew Lynch is a director at the Gilbert + Tobin Centre of Public Law at the University of NSW.
http://www.smh.com.au/comment/brandis-bigotry-andbalancingfreespeech2014032535gcj.html#ixzz2x2mEqvSx

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The B, C, D and E of the proposed changes

What does the law currently say?

March 26, 2014

The central law - Section 18C of the Racial Discrimination Act - makes it unlawful for someone to do an act that is "reasonably likely to … offend, insult, humiliate or intimidate'' others because of their race or ethnicity. Section 18B allows that race or colour may be one of the reasons for the hate speech - not necessarily the dominant reason.

Section 18D allows exemptions to protect free speech, including artistic works and scientific debate, ''done reasonably and in good faith''. Section 18E holds organisations liable for racially offensive acts done by their employees.

What changes are proposed?

The Abbott government wants to repeal sections 18B-E of the act. This means it would no longer be unlawful to ''offend, insult and humiliate'' someone because of their race, colour or ethnic origin. But, under new provisions, it would be unlawful to ''vilify'' or ''intimidate'' them.

The get-out clause

Human rights lawyers and some Liberal MPs have expressed concerns about an exemption that Attorney-General George Brandis has included in the exposure draft. The extraordinarily broad get-out clause would mean the laws do not apply to ''words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter''.

http://www.smh.com.au/federal-politics/political-news/the-b-c-d-and-e-of-the-proposed-changes-20140325-35gil.html#ixzz2x2o2dRKV

Fredrick Töben wrote a letter to Senator George Brandis but the Attorney-General refuses to meet with him

Personal – Free Expression at the Crossroads
The Attorney-General
Senator George Brandis
PARLIAMENT HOUSE
CANBERRA
24 November 2013
Re: Our 17 November 2013 Melbourne meeting-Richard Wagner THE RING GALA DINNER

Dear Senator Brandis
As advised by you I did ring your office Monday morning, 18 November 2013, to see when a meeting would fit into your busy schedule. Kate advised that nothing could be done until after 9-10 December 2013, and she would advise me accordingly.

On Friday 22 November 2013 I rang your office again and she advised that she had spoken with you and that it seems there is little prospect of my being received by you.

I did not go into the details of why I wished to see you because that matter had already been settled with you on Sunday evening.

In view of the latest article from Mr Dreyfus, I would like you to give my proposed submissions your valued consideration.

Please advise.

Dr Fredrick TÖBEN
toben@toben.biz

George Brandis releases planned sweeping changes to race hate laws

March 25, 2014 - 2:23PM, Jonathan Swan, James Massola

Labor rejects race law changes

Labor has rejected proposed changes to the Racial Discrimination Act that would allow offence, insult and humiliation but ban vilification and intimidation.

Exposure draft: Copy of proposed changes to Section 18C

Conservative columnist Andrew Bolt has endorsed the Abbott government's sweeping changes to race hate laws but Liberal MPs have already flagged concerns about exemptions in the proposed laws that apply to public debate.

A day after defending the right of Australians to be ''bigots'', Attorney-General George Brandis on Tuesday outlined sweeping and controversial changes to the Racial Discrimination Act, with an exposure draft approved by the Coalition partyroom.

Bolt's endorsement is significant given his legal case in 2011 was the catalyst for Senator Brandis and Prime Minister Tony Abbott to embark on making changes that will infuriate nearly every major religious and ethnic group in Australia.

''The government's proposals should permit us to ban what is truly wicked while leaving us free to punish the rest with the safest sanction of all - our free speech,'' Bolt told Fairfax Media on Tuesday.

''I think there is no contradiction between being for free speech and against racism, and this proposal goes a long way to recognising that.

''I have always argued both against racism and for the freedom to denounce racism in all its forms, including the new tribalising of our country.''

The News Corp commentator said his only concern was about the potential ''for some creative judge to one day redefine 'vilify' in ways we cannot today imagine''.

Section 18C of the Racial Discrimination Act, in its current form, makes it unlawful for someone to do an act that is reasonably likely to ''offend, insult, humiliate or intimidate'' someone because of their race or ethnicity.

Senator Brandis wants to remove the words ''offend, insult and humiliate'' but to leave intimidate, which he said provoked fear. The proposed changes will be subject to at least six weeks of community consultation.

Senator Brandis has also proposed repealing section 18D of the Act, which provides exemptions that protect freedom of speech. These ensure that artistic works, scientific debate and fair comment on matters of public interest are exempt, providing they are said or done reasonably and in good faith.

A new section will be inserted into the Act, which will preserve the existing protection against intimidation and create a new protection from racial vilification.
But an exemption would also be put in place under the changes that would ensure the protections did not apply to "words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter".

Illustration: Cathy Wilcox

Senator Brandis said it will the first time that racial vilification is proscribed in Commonwealth legislation.

Coalition MPs flag concerns

Coalition MPs Sarah Henderson and Jason Wood flagged concerns about this carve out, contained in part four of the exposure draft, and suggested it was too broad an exemption.
It's understood Ms Henderson asked a series of detailed questions about the changes, while Mr Wood – a former policeman – suggested there could be too many "ways out" allowed for a defendant under the proposed changes.
Liberal MPs David Coleman and Craig Laundy, who represent electorates with a high proportion of multicultural constituents, have previously urged Senator Brandis to keep the legal ''safety net'' protecting racial minorities against hate speech.
One Coalition MP told Fairfax Media that Senator Brandis' proposed changes were well handled, but said the politics of the issue were increasingly difficult for the Coalition.
"This is turning into a mess, Labor now has six weeks to throw bombs and marginal seat holders are getting nervous,'' he said.
A second Liberal MP confirmed the only serious concerns raised in the party room meeting related to the exemptions in part four.
"Broadly, people were supportive of the process," the MP said.
The Abbott government's proposed changes to the Racial Discrimination Act come after months of speculation, during which time a coalition of ethnic and religious groups made it known that they ''vehemently opposed'' any weakening of current protections against race hate speech.
Labor legal affairs spokesman Mark Dreyfus said on Tuesday that the changes marked a ''very substantial widening'' of exemptions and a "very substantial watering down of the protections that have served Australians very well to protect them against racist speech for almost 20 years".
"Both those requirements are being removed by what's proposed here and what that would mean, and I'll say it very directly, is that you could be telling bare-faced lies and know about telling bare-faced lies, you could be deliberately intending to hurl racial abuse under cover of a political discussion but that would not deprive you of the supposed free speech protection that's here provided,'' he said.
"You could drive a truck through this exception."

Bolt case 'won't happen again'

The influential right-wing think tank, the Institute of Public of Affairs, has also endorsed Senator Brandis' proposed changes to the race discrimination laws.
''Today's announcement is almost as good as a full repeal of section 18C of the Act,'' said Simon Breheny, director of the legal rights project at the IPA.
''While a full repeal of 18C would be preferable, the government's proposal goes 95 per cent of the way towards ensuring what happened to Andrew Bolt won't happen again,'' Mr Breheny said.
The Attorney-General and the Prime Minister have a close relationships with Bolt, and believe he was mistreated by the courts when he was found to have breached section 18C for an article he wrote about light-skinned Aborigines.
Justice Mordecai Bromberg ruled ''that fair-skinned Aboriginal people (or some of them) were reasonably likely, in all the circumstances, to have been offended, insulted, humiliated or intimidated by the imputations conveyed by [Bolt's] newspaper articles''.
Indigenous Liberal MP Ken Wyatt last week threatened to cross the floor to oppose the change. He said on Tuesday that he would consult with his community about the proposed changes.
"I certainly will be working with people in my electorate to see what their views and positions are,'' he said.
"I've always supported free speech because we need discussions around some very key and critical issues without feeling as though we can't raise them, if we don't raise them we don't effect change but there is also a limit in the way that you deal with free speech."
Jewish MP Josh Frydenberg is also understood to have expressed reservations about weakening the protections.
Representatives from the Aboriginal, Greek, Jewish, Chinese, Arab, Armenian and Korean communities have been visiting Parliament House for months and lobbying MPs from all parties to oppose the changes.
Executive Council of Australian Jewry executive director Peter Wertheim said he could not recall ''any other issue on which there has been such unity of purpose and strength of feeling across such a diverse group of communities''.

Palmer undecided on proposal

It is not certain that the Attorney-General will get his proposed changes through the Senate, even when the new Senate convenes on July 1. The Greens and Labor oppose changing the laws, as does independent Senator Nick Xenophon. The success of Senator Brandis' legislation may hinge on the Palmer United Party senators.
Palmer United Party leader and Fairfax MP Clive Palmer said on Tuesday that he and his senators had yet to decide their view on the legislation.
''First of all we will determine what our position is,'' said Mr Palmer, whose party could have as many as four senators, controlling the balance of power when the new Senate convenes on July 1.
But Mr Palmer warned Senator Brandis should not expect easy or straightforward negotiations with the Palmer United Party over the race hate laws.
''We will be strategic about determining the right time to reveal our position,'' Mr Palmer said.

With Lisa Visentin, Dan Harrison, Lisa Cox

http://www.smh.com.au/federal-politics/politicalnews/george-brandisreleasesplannedsweepingchangestoracehatelaws20140 32535fe3.html#ixzz2wwifL4Bx

Going, going...reformed. Section 18B,C,D and E

March 25, 2014 by J-Wire Staff

The Government Party Room this morning approved reforms to the *Racial Discrimination Act 1975* (the Act), which will strengthen the Act'sprotections against racism, while at the same time removing provisions which unreasonably limit freedom of speech.

Attorney-General Senator Goerge Brandis has announced that the legislation will repeal section 18C of the Act, as well as sections 18B, 18D, and 18E.

A new section will be inserted into the Act which will preserve the existing protection against intimidation and create a new protection from racial vilification. This will be the first time that racial vilification is proscribed in Commonwealth legislation sending a clear message that it is unacceptable in the Australian community.

I have always said that freedom of speech and the need to protect people from racial vilification are not inconsistent objectives. Laws which are designed to prohibit racial vilification should not be used as a vehicle to attack legitimate freedoms of speech.

This is an important reform and a key part of the Government's freedom agenda. It sends a strong message about the kind of society that we want to live in where freedom of speech is able to flourish and racial vilification and intimidation are not tolerated.

The draft amendments are released for community consultation. The Government is interested in hearing from all stakeholders on the proposed reforms. Submissions can be made until 30 April 2014 at s18cconsultation@ag.gov.au.

Exposure Draft

Freedom of speech (Repeal of S. 18C) Bill 2014

The *Racial Discrimination Act* 1975 is amended as follows:

Section 18C is repealed.

Sections 18B, 18D and 18E are also repealed.

The following section is inserted:

"It is unlawful for a person to do an act, otherwise than in private, if:

the act is reasonably likely:

to vilify another person or a group of persons; or

to intimidate another person or a group of persons,

and

the act is done because of the race, colour or national or ethnic origin of that person or that group of persons.

For the purposes of this section:

vilify means to incite hatred against a person or a group of persons;

intimidate means to cause fear of physical harm:

to a person; or

to the property of a person; or

to the members of a group of persons.

1. Whether an act is reasonably likely to have the effect specified in sub-section (1)(a) is to be determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community.

2. This section does not apply to words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter."

Shadow Attorney-General Mark Dreyfus responded quickly: "Changes to the Racial Discrimination Act announced by Senator Brandis today will significantly water down protections against racist hate speech in Australia.

Senator Brandis has confirmed the repeal of Section 18C in the face of widespread opposition from the community, including ethnic groups.

The claims by the Attorney-General that these proposed amendments will "strengthen the Act's protection against racism" are blatantly untrue.

The new section proposed by Senator Brandis removes the words offend, insult and humiliate and replaces them with the term "vilify", which is narrowly defined as "to incite hatred against a person or group of persons", and "intimidate", which is causing "fear of physical harm" to a person, property or a group.

The amendments also remove the protections for freedom of speech in political communication contained in Section 18D.

The replacement provision to Section 18D is so broadly worded that it totally undermines the limited protections against racism that remain.

Under these changes, if statements are deliberately made for the purpose of racial abuse, they are protected.

The insertion of this narrowly and ineptly drafted new provision in an Act, which has a strong history of consultation and community consensus, is a disgrace.

Sections 18C and 18D were introduced into the Act in response to a number of reports on racial violence, including the *National Inquiry into Racist Violence* by Race Discrimination Commissioner Irene Moss and the great Australian lawyer Ron Castan QC, the Royal Commission into Aboriginal Deaths in Custody and the Law Reform Commission's Report, *Multiculturalism and the Law*, as well as international treaty obligations, including the *International Convention on the Elimination of All Forms of Racial Discrimination*.

The recommendations in these reports were shaped into Section 18C and 18D following extensive consultations throughout the community.

In contrast Senator Brandis' proposed new provision appears to be little more than an appeal to his far-right political interests, drafted in the Liberal Party room.

These sections of the Racial Discrimination Act have served Australians well for almost 20 years.

The Government needs to stand up to racism, not give it the green light.

Racism has no place in modern Australia. Senator Brandis defending the rights of bigots to be heard shows the ideologically blinkered framing of these changes.

Australians should send a message to Senator Brandis and Tony Abbott that these proposed changes should be rejected in their entirety."

http://www.jwire.com.au/news/going-going-reformed-section-18bcd-and-e/41461

Andrew Bolt isn't a racist, but ...

Chelsea Bond, Updated March 25, 2014 16:01:47

The Coalition's push to make changes to the Racial Discrimination Act was in part a response to a court ruling that Andrew Bolt had breached the Act over his comments about Aboriginal Australians. Here, Chelsea Bond revisits the newspaper columnist's treatment of Aboriginality, explaining that race is more than skin deep.

"Andrew Bolt is not racist," George Brandis assured us just a few weeks back on ABC'sQ&A. Bolt too has insisted that he is not a racist. And much to Bolt's delight, Professor Marcia Langton has also confirmed that he is not a racist in a recent radio interview, the transcript of which was posted on Bolt's blog - a public apology also followed soon after on Q&A for broadcasting the discussion that apparently implied he was racist.

So there we have it: Andrew Bolt is not racist. But he does subscribe to some interesting ideas about race...

Bolt's insistence that we abandon talking about 'race' (specifically, it seems, when we talk about Aboriginal people) is informed by a logic that Aboriginal people are starting to

look 'whiter' in appearance. Indeed, 'race' as a biological construct was debunked long ago, with scientists finding more genetic variations within particular 'races' of people than between them. But race as a biological construct is useless, whether Aboriginal people all have black skin or white skin.

Differences between 'races' are not explained by genes, biology or physical traits but instead through social, cultural, historical and economic differences. Race *is* real, because we have acted as though it is real. Racist ideology informed colonial relationships and legislative interventions imposed upon Aboriginal people for over 200 years. To suggest to a group of people that race doesn't matter, when for generations they've been oppressed on this very basis, is either extremely naïve or extremely offensive.

Andrew Bolt is not racist ... but he has been "at worst, dishonest and misleading and at best, grossly careless", in the words of the Court of Appeal in their judgement in Popovic v Herald & Weekly Times & Anor in 2002.

Bolt insists that he has been silenced from commenting about Aboriginal people's identity, when he knows this to be untrue. In the case of Eatock v Bolt, Justice Bromberg assured Andrew that "nothing in the orders I make should suggest that it is unlawful for a publication to deal with racial identification, including by challenging the genuineness of the identification of a group of people". He can interrogate the identity of Aboriginal people who have fair skin but he has to be truthful. Bolt told fibs about Aboriginal people's lineage, in the same way that colonial blood quantum discourses do about ancestry, and lived experiences of identity.

Since this ruling, Bolt has been far from silent on this agenda. An additional 25 Aboriginal people have had their images published on his blog, often accompanying his comment of 'no comment'. The tactic of 'no comment' is cleverly deployed to cast the same aspersions about these people that he did toward the original 18 individuals who featured in the articles at the heart of the aforementioned court case. 'No comment' is also a useful device to masquerade himself as the "muzzled" victim who has allegedly been silenced by the powerful Left or the powerful Blacks. Though the fact that now even school children are the target of his attention makes clear that he has exercised no restraint, and knows no boundaries in his Aboriginality crusade.

Andrew Bolt is not racist ... but his views are reminiscent of a by-gone era. Bolt invited his readers to "meet the white face of a new black race"; however, 'white-faced Aboriginies' have been around for some time, Andrew, as has the white moral panic surrounding their existence.

A Report of the Protector of Aborigines in South Australia in 1910 expressed concern that, "in many parts of the State may be seen practically white males and females squatting in blacks' camps". This growing "half-caste" population was a 'menace' and problem that had to be fixed through their absorption into the general population, while the 'full-blood' was destined to die out.

The aspirational goal of a white Australia demanded the erasure of the 'Aborigine' from the Australian landscape. Yet it wasn't that easy. The Advertiser in 1934 reported Tindale's observations of a young girl "whose blood was fifteen-sixteenths white" but whose parents were still associating with "full blood aborigines". The article noted that it would be most unfortunate if that girl "were trained to tend toward the native rather than to European customs, because all though in every sense white to look at, she would in time, through her association with the blacks become to all intents and purposes a true aborigine".

In 1951, anthropologist M Reay remarked that "even the women of light caste are capable of tracing their own descent and that of other light-caste aborigines in their community back to their aboriginal ancestors". While Aboriginal blood may have been 'diluted' according to colonial blood quantum discourses, the identity of Aboriginal people and communities persisted - and well before it was "fashionable", Andrew. Reay notes that the half-caste's absorption into the general population was "retarded" because white men risked a "diminished status" if marrying an Aboriginal women (half-caste or otherwise), and prosecution for consorting with an Aborigine. She noted that "mixed blood" Aboriginal men were more likely to support illegitimate children than white men; so while "black velvet" may have been a highly sought after commodity by white men on the frontier, the products of these liaisons simply weren't.

But this conversation about Aboriginality runs more than skin deep. Defining and controlling Aboriginal people was a necessary project of the coloniser and remains a popular past-time of many non-Indigenous Australians. Chesterman and Douglas noted that protectionist legislation in all states demanded a legal definition of who was Aboriginal and who was not as there was a need to distinguish between the coloniser and the colonised.

And this speaks to the very core of Bolt's crusade. It is not simply skin colour that confounds Bolt, but in my view it is the possibility that the 'colonised' could simultaneously be Aboriginal *and* powerful in their life and in narrating their own identity. In one of his rare comments in recent times, Bolt bemused that an Aboriginal professor "speaks the colonisers' language very well". This remark tells us very little about Aboriginal identity and instead reveals his own anxiety toward the dilution of the 'coloniser's' identity, power and privilege.

Andrew Bolt may not be racist ... but his obsession with, and expectations of Aboriginal bodies and minds is ... well, no comment ...

Dr Chelsea Bond is an Aboriginal (Munanjahli) and South Sea Islander Australian and a senior lecturer with the Aboriginal and Torres Strait Islander Studies Unit at the University of Queensland. View her full profile here.

First posted March 25, 2014 16:01:47

http://www.abc.net.au/news/2014-03-25/andrew-bolt-isnt-a-racist-but/5344286/?site=indigenous&topic=latest

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Hate is not a dirty word

Michael Gawenda 5 March 2014, 7:46 AM

Michael Gawenda, former editor of *The Age*

It is strange and unsettling to be in the position where it is possible to be accused of defending racists and neo-Nazis, but so be it.

Tim Soutphommasane, the Federal Race Discrimination Commissioner, has delivered a spirited defence of section 18C of the Racial Discrimination Act, warning that the elimination of section 18C could license racial hatred and could "unleash a darker, even violent side of our humanity which revels in the humiliation of the vulnerable."

These are serious possibilities and they cannot be dismissed out of hand. There is ample evidence to suggest, not just in terms of history, but in the contemporary world, that there is indeed a darker and violent side to human beings that in the 'right' circumstances, can lead to unimaginable evil.

What is disputable, however, is the suggestion that relatively unrestrained free speech can create those 'right' circumstances. Despite it having become an accepted cliché, words are not bullets and it is doubtful that free speech was a major contributing factor to, say, the rise of Nazism in Germany or the ethnic cleansing that characterised the conflicts in the former Yugoslavia or the Rwandan genocide.

Of course, as Soutphommasane points out, we do not have unrestrained free speech in Australia, especially when it comes to racism. It is a criminal offence in all Australian jurisdictions to incite racial violence and not even the most emphatic opponents of Section 18C are arguing for any change to these laws.

Mr Soutphommasane was in part responding to his newly appointed fellow commissioner on the Human Rights Commission, Tim Wilson, whose role on the Commission is to defend 'human rights' which has been taken to mean, in the main, defending free speech.

Mr Wilson was -- and remains -- a well-known and activist opponent of Section 18C, which makes it an offence under civil law to engage in speech which is likely to "offend, insult, humiliate or intimidate another person or a group of people".

It was under section 18C that the columnist and blogger Andrew Bolt was found to have committed an offence in three columns he wrote about a group of Aboriginal activists who, he argued, were describing themselves as Aboriginal for personal gain.

Tim Wilson was one of Bolt's greatest defenders. So too was the then shadow attorney general George Brandis, not to mention then opposition leader Tony Abbott. Indeed, Brandis made a commitment in the immediate aftermath of the Bolt judgment that a coalition government would repeal section 18C of the Racial Discrimination Act.

It is a great pity that it was over the Bolt judgment that Wilson and Brandis made their stand against section 18C, for Bolt of course, is a hero of many Australian conservatives and is considered by many in the coalition government to be a key supporter in the media.

The effect of all this was to transform the debate about free speech and its limits into a battlefront of the so-called culture wars, with the ideological warriors of the right and the left taking positions on the issue based almost entirely on their dislike for each other.

The culture wars have muddied this most fundamental issue. People on the so-called left who have been staunch advocates for free speech were more or less silent when it came to the Bolt case. Bolt committed journalistic sins, but his right to hold and express certain views -- as repugnant as these might have been to some people -- should have been defended. By journalists in particular.

And for the ideological warriors of the right, free speech is great and open government is great but when it comes to holding the Abbott government to account for the secrecy and obfuscations with which it has conducted Operation Sovereign Borders, there is mostly silence.

It would have been much better -- and braver -- had Wilson and Brandis come out in robust support of free speech for the Holocaust denier Fredrick Toben when he was successfully prosecuted under section 18C for the racist garbage that he posted on his website.

In every sense, Toben is a low-life. He is someone who has inflicted pain on Holocaust survivors and their families. He is a racist and an apologist for Hitler and Nazism. He is a virulent anti-Semite. He and his ilk, if there is a hell, will undoubtedly rot there.

Our first instinct may indeed be to silence people like Toben in order to protect those people who are offended and insulted and humiliated by his Holocaust denial.

That is Soutphommasane's instinct. Who knows, perhaps it explains why neither Wilson nor Brandis came out in defence of Toben's right to express his repulsive and racist views. Their instinct too, may have been to protect and defend those people whom Toben traduced in such awful fashion.

It was easy for Wilson and Brandis to defend Bolt and paint themselves as great free speech advocates, but what is harder but nevertheless necessary is for them to defend the free speech of the Tobens of this world. That will be the effect, after all, if section 18C is repealed. [- emph. added – AI]

As long as they do not incite violence, people with the most repugnant of views will be free to express them -- though of course it is not at all incumbent on journalists to report the views of racists or for editors to give these people a platform on which to express them.

Section 18C ought to be repealed. Feeling insulted or offended or humiliated or even intimidated should not be a basis on which a court should be able to silence anyone.

Sadly, the repeal of section 18C may well embolden some racists as Soutphommasane argues, but it does not follow that racism will, as a result, be given any sort of legitimacy.

Underlying Soutphommasane's arguments is the view that we must be protected from the racists, that, as he argues, "…we cannot assume that good speech can overcome bad speech."

I think he is wrong about this. The progress that has been made in combatting racism and homophobia and misogyny has not come as a result of the curtailment of free speech, but in the main, as a result of good speech trumping bad speech.

https://www.businessspectator.com.au/article/2014/3/5/politics/hate-not-dirty-word

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On Mar 14, 2014, at 17:02,
Fredrick Toben wrote:

....that is why anyone confronted with a Jew pulling out the race/anti-Semite cards needs to point out the racism/anti-Gentilism contained in Babylonian TALMUD.

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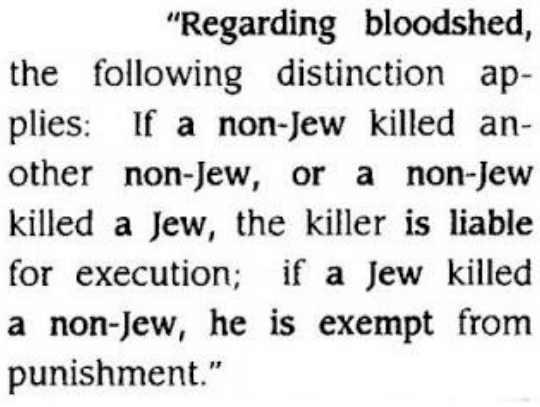
Michael Hoffmann responds thus:

Dear Dr. Toben

That is correct! And one does not need to be a Christian to point this out.

German philosopher Martin Heidegger wrote: "The Jewish people, with their talent for calculation, are so vehemently opposed to the Nazi racial theories because they themselves have lived according to the race principle for longest."


"Regarding bloodshed, the following distinction applies: If a non-Jew killed another non-Jew, or a non-Jew killed a Jew, the killer is liable for execution; if a Jew killed a non-Jew, he is exempt from punishment."

Babylonian Talmud: Sanhedrin 57a

Sincerely,
Michael Hoffman
Feast of Purim, 2014
www.revisionisthistory.org